#### **SECTION I: INTRODUCTION**

Nevada Department of Corrections has a vital and ongoing responsibility to serve the citizens of the State of Nevada through the effective, efficient, ethical, moral and lawful conduct of its employees. It is essential that public confidence in the Department's ability to investigate and properly adjudicate complaints against its members be maintained. Anyone who expresses dissatisfaction with the conduct of a Department employee is entitled to prompt acknowledgement of his or her complaint. State laws, NRS 289.057 and NRS 284.387, authorize the Department to investigate complaints of misconduct. These sections read in part:

NRS 289.057 Investigation of allegation of misconduct; suspension without pay; review of file by peace officer in certain circumstances; law enforcement agency prohibited from keeping or making record of investigation or punitive action in certain circumstances.

1. An investigation of a peace officer may be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action.

NRS 284.387 "Internal administrative investigations leading to certain disciplinary action: Right of employee to written notice..."

Furthermore, State law, NRS 289.055, requires the Department to have a procedure in place to investigate complaints.

NRS 289.055 Establishment and availability of written procedures for investigating complaints and allegations of misconduct. Each agency in this State that employs peace officers shall:

- 1. Establish written procedures for investigating any complaint or allegation of misconduct made or filed against a peace officer employed by the agency; and
- 2. Make copies of the written procedures established pursuant to subsection 1 available to the public.

This manual in conjunction with relevant Administrative Regulations and Operating Procedures is intended to fulfill the requirements of the law.

To that end, it is the policy of this Department to accept for review and possible assignment all complaints against its employees as prescribed by *Administrative Regulation 340*. The rights of the employee as well as the complainant must be preserved, and any investigation or hearing arising from a complaint must be conducted in an open and fair manner with truth as the objective. Each accused employee is entitled to consistent, accurate and timely disposition of complaints.

The Department will conduct thorough and impartial administrative and when necessary, criminal investigations into all allegations of employee misconduct as prescribed by Administrative Regulation 340. All investigations will seek to determine the pertinent facts, circumstances, and information regarding the complaint to be used by the Adjudicator or Prosecutor to determine a finding concerning the alleged misconduct.

The decision to initiate any investigation, following the receipt of a completed Nevada Department of Corrections' Standardized Complaint Form (NDOC-1064) or an incident entry in the Nevada Offender Tracking Information System (NOTIS), resides with the IG or designee, (IG). All investigations will be conducted by investigators from the OIG, (OIG) and/or by Division Heads/Wardens or their designees having jurisdiction or responsibility over the matter

or the employee being investigated. Any investigation request deemed to have a conflict of interest involving the OIG, Division Heads/Wardens or their designees will be reviewed by the IG for assignment to another investigative body. Investigative responsibility is determined and assigned by the IG or Director for the Department.

Investigative information developed concerning allegations of employee misconduct will be presented in a comprehensive "Report of Personnel Complaint Investigation". Completed reports will be forwarded to the responsible Division Head, Deputy Director or Director Designee who is responsible to adjudicate the complaint. The responsible adjudicator will review the report for the purposes of determining appropriate findings concerning each and every allegation in the complaint. Following that review, and when necessary, the Division Head will make a recommendation to the Department's Human Resources Administrator concerning any subsequent corrective or disciplinary action warranted by the case findings. Final authority regarding corrective or disciplinary action rests with the Director or his/her designee. All completed investigation case files will be forwarded to the OIG for review and storage. All investigation case files and their contents are confidential by law and subject to dissemination by IG or Director Authorization Only.

# **Duty to Report Misconduct**

The standard of conduct for employees of the Nevada Department of Corrections is outlined in Administrative Regulation 339, Code of Ethics, Employee Conduct, and Prohibitions and Penalties." The regulation states in part:

- Employees shall uphold the tenets of the United States Constitution, its amendments, the Nevada Constitution, Federal and State laws, rules and regulations, and policies of the Department.
- Employees shall report without reservation any corrupt or unethical behavior which could affect either inmates, employees, or the integrity of the Department of Corrections.

Upholding the public trust takes courage and integrity. As prescribed by Administrative Regulations 121, 332, 339, and 340, any Nevada Department of Corrections employee who becomes aware of any alleged act of misconduct by another Department employee is required to immediately report the information to his or her supervisor or to the OIG in a manner timely to the risk posed by the issue, or the need for a timely response. Complaints should be submitted using either the Nevada Department of Corrections' Standardized Complaint Form (NDOC-1064) or via an incident entry in the NOTIS computer reporting system pursuant to Administrative Regulation 121.

# Confidentiality

All information obtained during both a preliminary inquiry and any subsequent formal investigation is confidential. All Department representatives tasked with taking, investigating and/or adjudicating complaint allegations, shall hold the matter confidential. Employees' who are assigned the above tasks have a legal and ethical obligation to maintain the confidentiality of the investigation. State law protects employees' personnel records and personal information.

Investigators shall only discuss aspects of investigations with those who have a *right* and *need* to know. Without strict confidentiality, investigations can be compromised and evidence destroyed.

#### SECTION II: THE PRELIMINARY INQUIRY

Nothing is more frustrating to an investigator than to be assigned an investigation, only to find that the person who originally took the complaint did nothing more than informally interview the complainant. A "Golden Hour" exists for investigators. That is the critical time following an incident. Employees and/or supervisors who initially take complaints, especially for incidents that are recent or that have just occurred, should recognize the "Golden Hour" and conduct a thorough, diligent preliminary inquiry. Following the steps for a good inquiry can make the difference between resolving (exonerated, unfounded, sustained) a complaint, and leaving it unresolved (not sustained).

Due to changes to NRS 284 and NRS 289 during legislative session 76, all Department Administrators, Supervisors and investigators are held to specific and certain actions during all types of investigations that could lead to punitive action against an employee. Approaching an accused staff member during an informal inquiry and asking investigative questions, could have potential adverse action during the formal investigative and/or administrative process. Caution should be used with any accused or suspected employee. However, all staff continues to have the responsibility and duty to report according to AR 121 and in conjunction with the operational needs and duties, supervisory staff still have the duty to obtain reports from staff in support of the operational needs of the Department. This does not, however, preclude any staff member from their obligation of mandatory reporting to their supervisor subsequent any unusual incident.

# **Maintaining Objectivity**

Objectivity demands that investigators keep an open mind at all times. The most outlandish allegations could be true and seemingly credible charges could be completely false. The investigator's role is to gather the facts. The responsibility for drawing conclusions falls to the finder of fact, the Division Head and/or Director, who review the final investigation and administers appropriate corrective action or discipline.

# **Identify the Parties Involved**

Identifying complainants, witnesses, and involved employees is the first step to a preliminary investigation. Whether the number involved is one or twenty-one, the preliminary investigator (the person taking the complaint), must obtain each person's:

- Name
- Address
- Telephone (home, pager, work)
- Identifying numbers e.g., NDOC, NDL, NVID, SSN
- Best time for re-interview

TIP

Include all identifying information in NOTIS entries not just last names.

**Complainants** – Most often, the complainant(s) will come forward. They may or may not, be able to identify the involved employees. The complainant may or may not, know of witnesses.

Witnesses – The more time that elapses between the incident and its reporting, the greater the chance that a witness will be lost to the investigation. The preliminary investigator should identify witnesses early. Seek them out; find out what they have to offer. This will save another investigator from retracing the trail. What witnesses saw or heard and their proximity to the incident are important. Establishing a witness' credibility and relationship to the complainant and the accused employee is another aspect to cover.

#### NOTE

According to an Amendment to NRS 289.060, all witnesses to a matter who are Peace Officers and the accused is a Peace Officer, the witness Peace Officers will be identified, notified they are a witness and must be interviewed. This is mandatory during the formal investigation process. However for the informal process, all witnesses to a matter should be identified and at a minimum submit a written report.

**Involved employee** – Involved employees are potential accused employees or witnesses. Unlike complainants, the investigator may have to find them. One way to identify them is through other complainants and witnesses. Identification may be by name or description. Daily work and time sheets, logs, activity and incident reports are just a few of the typical documents available to connect involved employees to the related incidents.

#### TIP

Gathering these documents contemporaneous to the initial complaint will save time down the line for whoever is assigned the formal investigation

**Unknown Employee** – Every effort should be extended to identify witnesses, complainants and employees involved with an incident. Indeed, identifying all employees involved in the incident is an investigator's primary goal. Often, complainants will provide only a general description of an employee or admit to not knowing which specific employee committed the misconduct. When an investigator is unable to identify a specific employee from among four or fewer employees present, the four or fewer employees who fit the general description shall be listed as accused employees. Consider the following example:

A male inmate complains that a correctional officer after breaking-up a fight, unnecessarily kicked his thigh as he was being handcuffed. He describes the officer only as male. Your investigation reveals four officers were present during the incident, three male and one female.

Based on this example and after exhausting all means to identify the employee responsible for the act of misconduct, the three male officers would be named as the accused employee(s) who unnecessarily kicked the inmate. However, when the number of potentially involved employees exceeds four, the accused employee can remain *UNKNOWN*. This is only a guideline; concerned Division Heads may give different directions under special circumstances.

#### **Collect and Preserve Evidence**

Evidence can take many forms depending on the nature of the complaint. When accusations of unnecessary force are alleged, it may be necessary to seize employees' equipment such as boots,

batons or flashlights. Photographing items, locations and injuries is a vital way to preserve valuable evidence. Collection procedures should follow the same standards as criminal investigations. Collection and preservation of evidence may also mean obtaining breath or urine samples from employees where legally appropriate.

#### **Medical Treatment**

If complainants allege injuries, ensure they receive medical treatment. Ask them to sign a medical release waiver so that treatment records can be included in the investigation, if applicable. Documentation of the absence of injuries is just as important as the presence of injuries. As mentioned above, document the injuries or the absence of injuries through color photographs. It is also important to document any delay in medical treatment.

# **Interview the Complainants and Witnesses**

Interviews should be recorded and each person interviewed separately and not allow for a collective gathering of complainant(s) and/or witnesses in an effort to avoid collusion against or for the accused and as an means of preservation of each person's witnesses statement to what he/she saw, did, heard etc. The preliminary investigator must attempt to narrow the focus of investigations as much as possible. This is done by asking who, what, when, where, why and how type questions.

- What happened?
- Who was with you?
- Who did it to you?
- Were you injured?
- What is your injury?
- What was said or done?
- Who said it or did it?
- Where did it happen?
- When did it happen?
- How did it happen?
- Did any one else see (hear) it happen?
- How many persons were present?

TIP

It is important to address the reasons for any delay in reporting the complaint. The reasons should be noted in the investigation.

Complete the Complaint Form (NDOC-1064) or NOTIS entry including each person making a complaint. Submit any form(s) with the completed preliminary investigation.

# **Assembling the Preliminary Investigation**

Preliminary investigators need to keep their supervisors aware of any complaint initiated against employees. Notification procedures are prescribed by Administrative Regulation 322 and vary

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depending on the scope and nature of the investigation. With very sensitive cases, notifications might only be communicated verbally. In other situations, calls to Division Heads and or the IG may be required during off hours.

## Conclusion

Do not skimp or take short cuts in the preliminary investigation. The Department, its employees and the public deserve thorough and objective investigations. The preliminary phase is the first step toward that objective. Preliminary investigators should approach any investigation as if he or she were the individual who is going to conduct the formal investigation. This section provided an outline of the steps to conducting a preliminary investigation of a complaint. Each of the elements within these steps is discussed in greater detail in separate sections of this guide.

#### SECTION III: THE FORMAL INVESTIGATION

The OIG will assign the formal investigation to an appropriate investigator. The investigator may be an individual assigned to the OIG or may be the appropriate Division Head or designee. The formal investigation consists of the steps taken by the investigator to assemble the case file, investigate the complaint and prepare the final investigative report. This person may or may not be the supervisor who initially took the complaint from the complainant. This section outlines the steps for assembling the case file and for conducting the formal investigation.

# **Assembling the Case File**

Following review and classification, the OIG will assemble the formal case file folder and/or documents for each new case. The case file folder will contain the completed Complaint form or NOTIS entry, the assigned case number *and sequence number*, copies of any recordings and available attachments gathered during the preliminary investigation. The folder will also contain blank Chronological Record forms and all necessary notification and admonishment documents. The case file or case information will be provided to the assigned investigator.

(Note: In cases where the assigned investigator is a supervisor at an institution/facility, the Division Head shall ensure that a duplicate working file containing the above described items is prepared and provided to the assigned investigator. The assigned investigator will use the working file and the formal file will be retained at the OIG.)

Investigators are responsible to ensure that they have all relevant materials necessary to conduct a thorough investigation. Investigators should locate and assemble any documents related to the matter. This is a list of some documentation the investigator might obtain early in the investigation.

- Copy of the complaint report/allegations
- Crime, arrest, or other miscellaneous records bearing on the allegations
- Diagrams/photographs of the scene, if applicable
- Witness list, including telephone numbers, addresses, and available dates
- Chronological record
- Medical treatment records
- Photographs of injuries and injured areas, visible or not
- Documents that establish contact between the accused staff member and the complainant
- Any applicable logs, shift reports, grievance, and/or documentation of accused or complainant activity.

# **Review the Complaint and Related Reports**

Begin by reviewing the complaint and any related material within the case file with a check against NOTIS. As mentioned in the previous section, the investigator must maintain objectivity when reading the file. Some of the things to look for are:

- Due dates, including any possible statute limitations and the new limit based upon changes to NRS 284 made during the 76th Legislative session.
- Discrepancies contained in documents or statements attached to the complaint
- Witness, Complainant, and Accused Staff identity and availability (days off, vacation, retirement, release date, etc.)
- Potential documentary evidence that must be gathered.
- Any potential criminal action and its impact on the investigative approach.
- Any scientific evidence analysis (blood, fingerprints, ballistics).

#### **Set Due Dates**

The Administrative discipline process is complicated and lengthy. In managing the investigative assignment, the investigator must set personal due dates as the investigation phase is just one aspect of the process. Once the investigation is completed, it is adjudicated by the appropriate Division Head, reviewed at different levels for consistency and fairness and acted upon. The OIG sets a target a specific number of days to receive, review, finalize and forward cases to the concerned Division Head. With the new limitation in mind of the staff member having in hand the pending discipline action within 90 days of the date the accused was notified of the interrogation/interview, investigative due dates will be set at 30 days from the accused staff member being served the notice of interrogation/interview to ensure adequate time for review and any necessary follow up or corrections. Following submission and approval of the investigative report, the report is submitted to the concerned Division Head for Adjudication. The investigation phase is considered complete when the concerned Division head makes a finding concerning the allegations. Investigators must have an understanding of the process and schedule the investigation accordingly. If after beginning, the investigator determines that additional time is needed to complete the formal investigation, a request is made to the OIG, through the investigator's chain of command, for an extension. Given adequate justification, an extension will be granted and the investigator will be notified in writing of the new due date.

Once an accused staff member is notified of the interview/interrogation and the 90 day "clock" has began, each subsequent failure to attain the completion date, has an impact on the totality of the 90 days. Any subsequent request for additional time, after the 90 days from the date the accused staff member was notified about the interrogation/interview, must be sought with guidance from the IG's Office, keeping in mind the totality of the required 90 day process for all steps between service and notice of discipline.

The assigned investigator has an obligation to meet due dates and to keep his or her supervisor and respective Division Head apprised of the investigation's status and progress.

The assigned investigator must verify that all appropriate steps have been taken during the preliminary investigation. If any steps have been overlooked, the investigator must address them. Some common considerations are:

- Administering appropriate sobriety tests where legally appropriate
- Preserving physical evidence

- Making appropriate notifications and admonishments
- Interviewing transient witnesses who might be difficult to locate later
- Paraphrase the complainant's statement, if necessary. If that's already been done, listen to the recording anyway. The investigator can learn many things from the tape.

# **Identifying and Working to Form the Allegations**

The case assignment form will list the main heading of the allegation(s). Usually the case assignment form will list allegations based upon information contained in the original reports. If during an investigation, information is discovered indicating there may be additional allegation(s) related to the accused, the formation of new allegations should be discussed with a supervisor. If the additional allegation(s) are developed and the accused is a Peace Officer, there may have to be a new assigned case. If additional allegation(s) are developed and the accused is a non-Peace Officer, additional allegation(s) to the original case may be added. The investigator should evaluate the allegations in the case and decide if they address the misconduct alleged by the complainant. Making sure the main heading of the allegations are appropriately assigned will help narrow the focus of the investigation and eliminate unrelated issues. Section X gives detailed examples of how to write allegations.

**Questions to Ponder** – Ask questions to evaluate and identify issues.

- Were the employees on or off duty when the alleged misconduct occurred?
- What are the possible charges?
- Are the charges administrative in nature or criminal?
- What are the most likely defenses or excuses one will encounter?
- Are there any unidentified witnesses?
- Are unnamed employees involved?

These are just a few questions to consider. Many others will come to mind depending on the nature of the misconduct. If at any time, the investigator believes or finds that any of the possible charges are criminal in nature, he or she should consult with the IG or designated supervisor.

**List the Questions that Address Your Concerns** – A list of preliminary questions will help form later interview questions and focus the investigation. Consider the following:

A complainant reported that a correctional officer unnecessarily struck him with a food tray.

From this one allegation, at least three considerations are apparent:

- Was the complainant struck with a food tray?
- Was the officer accused truly the person who struck the complainant? (i.e., is identification an issue?)
- Was the strike necessary?

Additional considerations would be:

- What happened just prior to the incident?
- What was the basis for the contact between the officer and the complainant?

# **Determine Witness and Employee Availability**

Make a list of all the persons identified for interview. This will assist in planning interviews and developing investigative strategies more effectively. Remember, it is now mandatory that all Peace Officers who are identified or reported as witnesses must be notified they are a witness, with a reasonable time frame to obtain representation if they wish then interviewed. The employee witness and accused staff members' information can usually be obtained from the Department's NSIC management system, institutional or division supervisor, and or Personnel. The list should include the following:

- Name and address
- Institution housed at
- Days off
- Shift assignment (start and end times)
- Vacation periods
- Day and night telephone numbers

# **Interview the Supervisor Who Took the Original Complaint**

Investigators should not overlook the need to interview the initial reporter or who took the complainant's original statement. This person is a potential source for insight and information that is not present in tape recordings or paraphrased interviews. Use this interview to verify the date of occurrence and the date of reporting the incident. An explanation for any delays should be noted in the Chronological Record and the investigator's notes section of the investigation report.

Ask for additional notes, documents, photographs, etc., that were not included with the original complaint submission. Investigations can be adversely affected when at subsequent hearings, the initial person who took the complaint testifies to the existence of rough notes and the investigator is unable to produce them. Such a situation gives the defense the opportunity to argue that these notes contained exculpatory information that is being withheld.

# **Plan Investigative Strategy**

Developing a strategy for investigations will save valuable time in the long run. Narrow the scope of the investigation and focus on the best way to proceed. Consider consulting with experts, if necessary, especially for matters involving technology, fiscal and personnel related practices, rules and or regulations. Understand though, investigations can take many turns; planning is a continuous process. Here are some questions to ask:

- What special considerations am I facing in this investigation?
- What are the liability issues?

Review available sources of information relative to the allegation at hand about the accused staff member, including any concerns previously about behavior, review sources of information about the complainant, could the allegation have happened based upon shift assignment versus facts of the allegation; and review any other potential pertinent information to be developed pertaining to complainant, witnesses and accused.

#### **Examine the Scene**

Going to the location where the alleged incident occurred and personally viewing the area can provide insight. Investigators could be better prepared to ask questions of the witnesses, complainant and accused. Investigators could also be able to recognize key points and inconsistencies during interviews that might otherwise go unnoticed.

When responding to the scene, view it at the same time of the day as the incident occurred if possible. Lighting, noise levels, weather and types of surroundings vary greatly. They can factor into the investigation.

Considerations for viewing the scene:

- Become familiar with the layout
- Identify specific locations of witnesses and employees
- View the scene at the same time of day as the incident occurred
- Determine lighting, noise levels, weather, types of surroundings, etc.
- Gather any physical evidence that is present

# **Gathering and Securing Physical Evidence**

As with any investigation, the investigator is responsible for gathering and securing evidence and when necessary, getting it analyzed. Gathering evidence includes items found at the scene of the incident and elsewhere, which are relevant to the incident. When gathering evidence, the investigator must take care in preserving it so as to avoid it becoming contaminated, altered or changed. Also, the investigator must maintain custody of the items to ensure that they remain secure and are delivered to a property room for safekeeping. Potential physical evidence might include:

- Fingerprints
- Blood or bodily fluids, whether present at the scene or obtained as a sample for testing
- Ballistic evidence
- Video surveillance tapes
- Documents such as payroll records, timesheets, access logs, sick and annual leave records, etc.
- Computerized transaction logs, disk drives, etc.

Evidence recovered pursuant to an investigation into allegations of staff misconduct should be documented on a Property Report and secured in the OIG's evidence room. In those cases where evidence was previously gathered during the initial review, the investigator assigned to the subsequent formal investigation should obtain, document and properly report the obtaining of the evidence from the person it was retrieved from, then subsequently document and inventory it to the IG evidence locker.

# **Photographing Evidence**

Whenever possible, the investigator should take color photographs of evidence at the location of its seizure. Such photographs preserve the integrity of the evidence and are easier to handle than the physical evidence itself. These are also useful during interviews and at future criminal or administrative hearings. Specifically, photographs might be taken of:

- Injuries and the absence of injuries
- Property damage or the condition of property at the time of an incident
- Wet, dry or iced over surfaces that might account for a person falling and becoming injured
- Objects used in an excessive force complaint
- Stains on clothing and/or objects

A photograph log should be developed and maintained when taking photographs of evidence.

# **Photographing the Scene**

Photographs taken of the scene of the alleged incident are often useful. They provide a perspective that is often missing from a written explanation or sketched diagram. For example, when lighting is an issue, a photograph taken at the same approximate time of day and under the same lighting conditions as the incident might be useful, or photographs taken from the vantage point of witnesses could help in evaluating credibility.

A photograph log should be developed and maintained when taking photographs of the scene.

#### Reenactments

Occasionally, video taping a reenactment might be appropriate to ascertain whether a witness could, or could not, have seen what was alleged. Reenactments should be attempted only when the original conditions of the incident are known and can be replicated accurately. Moreover, several reenactments may be necessary to evaluate the vantage point of each witness. Consult a supervisor/OIG before proceeding with any reenactment.

#### Note: Remember, all recording must be completed in compliance with relevant law.

Some investigations have numerous complainants and or witnesses. In other cases, the identity of a complainant or witness may be in question. Photographs of complainants and witnesses can be helpful during interviews and in the subsequent review of the investigation. Photographs are often available in Department personnel files, inmate files, the Department of Motor Vehicles or by simply making copies of a complainant's or witness's driver's license or state issued ID card. Avoid using dated photographs as they might appear prejudicial or demeaning to the complainant or witness and thus, compromise the integrity of the investigation. This type of photography should not be used for identification of a suspect by a witness.

## **Canvas the Scene for Additional Witnesses**

The key to completing conclusive investigations is identifying credible witnesses. When the investigator goes to the scene to view, diagram and/or photograph it, take the opportunity to canvas the area for new witnesses. Going to the scene at the same time of day as the incident occurred affords the opportunity to notice similarities. For example, persons reporting for duty, leaving or returning from morning or afternoon break or lunch or going home for the day at roughly the same time may have valuable information concerning an incident. Look for witnesses in places with a vantage point toward the incident. This might be an adjoining office or workspace, inmate housing unit, tower, etc.

All contacts should be documented, including those who say they have no knowledge of the incident. The Chronological Record should reflect these contacts. The information can later be included as Investigator's Notes in the investigative report. A typical entry might appear as follows:

The following persons were contacted during this investigation. All said they had no knowledge regarding the alleged misconduct:

Doe, John, Correctional Officer, Ely State Prison, (775) 555-1234 Contacted: May 1, 2002 at 0945 hours

Doe, Mary, Medical Assistant, Ely State Prison, (775) 555-4321 Contacted: May 1, 2002 at 1330 hours

Doe, Frank, Inmate, Ely State Prison, BN 12345

Contacted: May 1, 2002 at 1415 hours

## **Obtain Medical Records**

As soon as possible, obtain all relevant medical treatment records for incidents in which the medical condition of a witness, complainant or accused employee or inmate is a factor. At the end of interviews, ask interviewees, whose medical treatment is a factor, to sign a release for each medical facility from which records will be requested. If the interviewee or subject of the incident is an inmate, in most cases, the Department's Medical division can provide the necessary medical records to the Investigator.

#### **Obtain Financial Records**

Should the nature of the investigation require a review of financial records, the OIG and likely the Office of the Attorney General should be consulted, as there are numerous restrictions and statutory limitations associated with obtaining them.

#### SECTION IV: PREPARING FOR INTERVIEWS

Background preparation and planning is an essential element to conducting thorough interviews. Being familiar with background information provides an edge during interviews. One caution about this step: *Investigators MUST NOT allow the formation of preconceived notions concerning persons or events that might compromise objectivity.* 

## Researching Background

Frequently, interview subjects reveal critical information in unexpected or off-hand comments. A well-prepared investigator will be able to recognize the significance of such comments and capitalize on them. Privacy rights of all persons are important. Background research should only be conducted in areas and on persons that are germane and relevant to the investigation. Background research may be relevant concerning complainants, witnesses and/or accused persons. Some sources of information are listed below in no particular order:

- Crime and arrest reports
- Intelligence files
- DMV records
- Past or pending grievances or kite complaints
- Family background and associations
- Education
- Employment and promotion history
- Attendance/leave records
- Performance evaluations and work performance standards
- Training records

Many of these sources are confidential and require a "need to know, right to know" authority, and in some circumstances may require the permission of the individual under consideration. The amount and nature of research conducted on any particular subject will depend on relevance and the nature and scope of the investigation. For information that is confidential and not readily available, the investigator must consult with the OIG.

# **Scheduling Interviews**

Generally, all interviews should be scheduled in advance and conducted in person. As a general rule, all accused employees should be interviewed in person and tape or digitally recorded. Frequently, key witness staff members prepare written statements concerning an event. While useful in providing insight, written statements should not be substituted for in-person interviews and never in the case of an accused staff member, unless that staff member is no longer employed by the Department and that person fails to cooperate with the investigation. However, occasionally an in-person interview of a witness is not practical. Non-employee subjects who refuse in-person interviews or whose location makes an in-person interview impractical may be interviewed by telephone. As with in-person interviews, telephonic interviews are tape or digitally recorded. Pursuant to State law, the subject *must be* advised of

telephonic tape recording in advance. Consult a supervisor or the OIG if circumstances indicate the need to conduct an unannounced interview. Occasionally, the nature of an investigation may require one.

#### **Department Employees**

**Peace Officer -** NRS 289.060 establishes certain rights/requirements concerning the interrogation of an individual with peace officer status, whether a witness or as an accused. (Note changes due to legislative amendments will be annotated in red for quick review and compliance). Those are as follows:

# NRS 289.060 Notification and requirements for interview, interrogation or hearing relating to investigation; prohibition against use of certain statements or answers in subsequent criminal proceedings.

- 1. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted pursuant to NRS 289.057, provide a written notice to the peace officer who is the subject of the investigation. If the law enforcement agency believes that any other peace officer has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation, the law enforcement agency shall provide a written notice to the peace officer advising the peace officer that he or she must appear and be interviewed as a witness in connection with the investigation. Any peace officer who serves as a witness during an interview must be allowed a reasonable opportunity to arrange for the presence and assistance of a representative authorized by NRS 289.080. Any peace officer specified in this subsection may waive the notice required pursuant to this section.
  - 2. The notice provided to the peace officer who is the subject of the investigation must include:
  - (a) A description of the nature of the investigation;
  - (b) A summary of alleged misconduct of the peace officer;
  - (c) The date, time and place of the interrogation or hearing;
- (d) The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation or hearing;
  - (e) The name of any other person who will be present at any interrogation or hearing; and
  - (f) A statement setting forth the provisions of subsection 1 of NRS 289.080.
  - 3. The law enforcement agency shall:
- (a) Interview or interrogate the peace officer during the peace officer's regular working hours, if reasonably practicable, or revise the peace officer's work schedule to allow any time that is required for the interview or interrogation to be deemed a part of the peace officer's regular working hours. Any such time must be calculated based on the peace officer's regular wages for his or her regularly scheduled working hours. If the peace officer is not interviewed or interrogated during his or her regular working hours or if his or her work schedule is not revised pursuant to this paragraph and the law enforcement agency notifies the peace officer to appear at a time when he or she is off duty, the peace officer must be compensated for appearing at the interview or interrogation based on the wages and any other benefits the peace officer is entitled to receive for appearing at the time set forth in the notice.
- (b) Immediately before any interrogation or hearing begins, inform the peace officer who is the subject of the investigation orally on the record that:
- (1) The peace officer is required to provide a statement and answer questions related to the peace officer's alleged misconduct; and
- (2) If the peace officer fails to provide such a statement or to answer any such questions, the agency may charge the peace officer with insubordination.
- (c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, the law enforcement agency shall notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter.
- (d) Allow the peace officer who is the subject of the investigation or who is a witness in the investigation to explain an answer or refute a negative implication which results from questioning during an interview, interrogation or hearing.

4. If a peace officer provides a statement or answers a question relating to the alleged misconduct of a peace officer who is the subject of an investigation pursuant to NRS 289.057 after the peace officer is informed that failing to provide the statement or answer may result in punitive action against him or her, the statement or answer must not be used against the peace officer who provided the statement or answer in any subsequent criminal proceeding.

(Added to NRS by 1983, 2097; A 1993, 2379; 2005, 622; 2011, 1750)

NRS 289.080 Right to presence and assistance of representatives at interview, interrogation or hearing relating to investigation; confidential information; disclosure; record of interview, interrogation or hearing; right of subject of investigation to review and copy investigation file upon appeal.

- 1. Except as otherwise provided in subsection 4, a peace officer who is the subject of an investigation conducted pursuant to <u>NRS 289.057</u> may upon request have two representatives of the peace officer's choosing present with the peace officer during any phase of an interrogation or hearing relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer.
- 2. Except as otherwise provided in subsection 4, a peace officer who is a witness in an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during an interview relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer. The presence of the second representative must not create an undue delay in either the scheduling or conducting of the interview.
- 3. A representative of a peace officer must assist the peace officer during the interview, interrogation or hearing. The law enforcement agency conducting the interview, interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer.
  - 4. A representative must not otherwise be connected to, or the subject of, the same investigation.
- 5. Any information that a representative obtains from the peace officer who is a witness concerning the investigation is confidential and must not be disclosed.
- 6. Any information that a representative obtains from the peace officer who is the subject of the investigation is confidential and must not be disclosed except upon the:
  - (a) Request of the peace officer; or
  - (b) Lawful order of a court of competent jurisdiction.
- → A law enforcement agency shall not take punitive action against a representative for the representative's failure or refusal to disclose such information.
- 7. The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the interview, interrogation or hearing. If the agency records the proceedings, the agency shall at the peace officer's request and expense provide a copy of the:
  - (a) Stenographic transcript of the proceedings; or
  - (b) Recording on the digital or magnetic tape.
- 8. After the conclusion of the investigation, the peace officer who was the subject of the investigation or any representative of the peace officer may, if the peace officer appeals a recommendation to impose punitive action, review and copy the entire file concerning the internal investigation, including, without limitation, any recordings, notes, transcripts of interviews and documents contained in the file.

(Added to NRS by 1983, 2098; A 1991, 647; 1993, 2380; 2005, 623; 2011, 1752)

(Note: The provisions of NRS 289.060, 289.070 and 289.080 do not apply to any investigation which concerns alleged criminal activities [NRS 289.090] and when the investigation is purely criminal in nature. Other Constitutional protections would apply.)

**Non-Peace Officer** – Additionally, pursuant to NRS 284.387 any employee (non-peace officer as well) who is the subject of an internal administrative investigation that could lead to disciplinary action against him or her is also afforded certain rights:

NRS 284.387 Internal administrative investigations leading to certain disciplinary action: Right of employee to written notice of allegations before questioning and to representation; deadline for and notification to employee of completion; extensions.

- 1. An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee pursuant to NRS 284.385 must be:
  - a. Provided notice in writing of the allegations against the employee before the employee is questioned regarding the allegations; and
  - b. Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. The employee must be given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.
- 2. An internal administrative investigation that could lead to disciplinary action against an employee pursuant to NRS 284.385 and any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1. If the appointing authority cannot complete the investigation and make a determination within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1, the appointing authority may request an extension of not more than 60 days from the Administrator upon showing good cause for the delay. No further extension may be granted unless approved by the Governor. (Added to NRS by 2003, 2003; A 2011, 1496)

As enumerated above, the provisions of 284.387 apply to all state employees. Additionally, certain case law, including NLRB v. Weingarten, Inc. and Eplilepsy Foundation of Northeast Ohio v. NLRB, extend limited but similar representation protections to employees. Accordingly, when it becomes necessary to conduct employee misconduct investigations, apply the applicable notification and representation guidelines to the employees, as determined by whether or not the employee is a Peace Officer. Any time an employee who is the subject of an administrative investigation is to be questioned concerning activities that may result in corrective/punitive action, appropriately notice the employee and allow the employee to have appropriate representative(s) or attorney(s) present if the employee so desires and as established by either NRS 284 or NRS 289. If an employee requests to have a representative(s) present for an interview, allow the mandated amount of time to obtain such representation. Each case has variables that must be considered. NRS 289.060 identifies "no later than 48 hours before any interrogation or hearing" and 284.387 identifies "not less than two business days" as sufficient time to obtain a representative. Reasonable flexibility is recommended. Generally, three business days is sufficient time to find a suitable representative. More or less time might be appropriate depending on circumstances. In most cases, interviews can be scheduled without problem and to all parties' convenience. Individuals claiming they cannot find a representative should not stymie investigations or cause unnecessary delay in investigations. Once the prescribed time for obtaining a representative has passed, the interrogation/interview may be conducted.

(Notes: On September 9, 2003 the Attorney General issued Opinion No. 2003-03 concerning the language in NRS 284.387. Part of that opinion reads as follows, "Section 4's limitation on the questioning by an agency of an employee suspected of misconduct is that the employee must be given at least two business days notice to obtain representation. Based on the limited and clear language of section 4, once the two business days notice has elapsed, the agency may then schedule the questioning of the employee at any time, subject to the relevant payment due the employee for callback or overtime pay, if the questioning is not conducted during the employee's regularly scheduled work time.".)

Remember, if a representative is present during an interview, he or she must not be connected to, nor the subject of, the same investigation. If the Department tape or digitally records the interview of an accused staff member, a copy will be provided to the employee upon request at the employee's expense.

As outlined in NRS 289.080(3) and (4), a representative must not be connected to or the subject of the same investigation and any information that a representative obtains from the accused peace officer concerning the investigation is confidential and MUST not be disclosed except upon certain circumstances. Any information that a representative obtains from a peace officer who is a witness must not be disclosed at all.

It is preferred that interviews of Department employees be scheduled for the employee's regular working hours or at least during their normal waking hours when the interview is conducted off duty. Occasionally, the seriousness of the investigation may result in off-hours interview. When interviews of employees occur during non-working hours, the employee shall be compensated pursuant to Department compensation guidelines. The time an employee spends in travel status and in the interview, should be documented in investigative notes.

#### **Non-Employees**

**Witnesses** – Interviews of witnesses or complainants who are not Department employees should be scheduled at the subject's convenience while avoiding unnecessary delay to the investigation. If a subject is difficult to locate or schedule, consult with a supervisor or the OIG. Letters may be sent to the subject, and Chronological Record entries should be made to memorialize goodfaith efforts to interview the person.

**Length of Interviews** – Interviews will vary in length depending on the gravity and complexity of the investigation. Schedule enough time to conduct a thorough interview without being rushed. Lengthy interviews may be continued on another day; however, end the interview by stating on the tape that the subsequent meeting will be a continuation of the same interview and not a re-interview to avoid any misunderstanding. Keep in mind the objectives and a sense of fairness.

**Location of Interviews** – The location of interviews can be critical. Employees should be interviewed at Department facilities. Consult a supervisor or the OIG if the employee insists on an interview at a location other than a Department facility. Non-Department subjects, witnesses and complainants should be encouraged to come to Department facilities for interviews to ensure control over the interview. Conducting an interview at a private residence might leave the investigator vulnerable to the subject dictating certain conditions, such as insisting that a spouse observe an interview against the investigator's wishes. This could taint the spouse's statement if he or she should need to be interviewed later.

Once an interview date is confirmed, reserve an interview room if an investigator office is not available. Don't assume one will be available. Use a location that is quiet, private and has necessities like tables, chairs, electrical outlets, etc.

# **Tape or Digitally Recording Interviews**

All interviews of Department staff members, witness and/or accused will be tape or digitally recorded in their entirety. Before actually conducting an interview, review the following guidelines. The Department's practice is to not surreptitiously record administrative interviews.

**Off-tape discussion** – Off-tape discussion should be avoided as much as possible. Interview subjects often speak frankly during pauses in questioning, revealing information the investigator might not otherwise have obtained. At the announcement of a break, it is not unusual for subjects to relax and make significant comments or admissions.

**Witnesses** (**not employees**) – When a witness or complainant who is not a department employee objects to a recorded interview, attempt to explain the rationale for recording. Usually, a polite explanation will gain the cooperation of most subjects. However, if the subject still refuses to be recorded, document the refusal and continue with the interview.

**Equipment** – One of the most embarrassing moments for investigators is when, after a lengthy interview, it is discovered the recorder malfunctioned and one has to politely ask to do it again. Such embarrassment can be avoided by following the guidelines below:

- Department issued Digital recorder
- Deactivate the voice-operated switch
- Test the recorder, ensuring each subject's voice can be heard from where they are seated
- If the recorder has a counter, indicate the counter number in notes and on the tape box
- Use OIG numbered/labeled tapes and have extras on hand, if applicable. All digitally recorded interviews will be downloaded to removable media and labeled accordingly
- Test the recorder at the beginning and end of each interview
- After the interview, remove the punch tab on each tape to avoid accidental erasure, if applicable

#### **Order of Interview**

The order of interviews will frequently be controlled by the circumstances of the investigation and the type of complaint. As a general rule, interviews should be conducted in the following order:

- Person that took the initial complaint
- Complainant
- Non-Department witnesses
- Employee witnesses
- Accused employee (if multiple accused, most culpable last, there will be separate cases for each accused employee.)

#### Witness' Limitations

Preparation is everything. In the movie "Twelve Angry Men" Henry Fonda made the observation that the key witness needed glasses to see. His point swayed the jury's verdict.

Whether a witness has poor vision or is on medication can be important. Be cognizant of conditions that can alter a person's perceptions:

- Color blindness or night blindness
- Needs prescription glasses
- Taking medication
- Hard of hearing
- Primary and secondary languages
- Witness' relationship to other parties, including accused

# **Special Considerations**

Refer to Section IX of this guide for more detailed discussions regarding special considerations. The topics are listed below:

- Confidentiality
- The Need for Documentation
- Parallel Administrative and Criminal Investigations
- Self Incrimination
- False and Misleading Statements
- Exculpatory Information
- Legal Advise
- Privileged Communications
- Polygraph Examinations
- Probationary Employees
- Searches of Employees
- Searches of Department-Owned Storage Spaces
- Employees Arrested or Suspected of Criminal Acts
- Substance Abuse Related Investigations

#### **SECTION V: CONDUCTING INTERVIEWS**

With the background and preparation done, the next step in an investigation is conducting the interviews. The investigator is fact gatherer, not the fact finder. The investigator must be willing to accept the varying versions of events that subjects give. This does not mean the investigator can't confront persons with discrepancies between statements or evidence.

Investigators are encouraged not to use offensive language. Additionally, investigators will not use threats of punitive action, except when an employee refuses to answer questions. Further, no promise of reward may be made as an inducement to answer questions.

# **Primary Investigator**

The primary investigator plans the case strategy and leads the interviews. Customarily, the primary investigator has the following responsibilities during the interview:

- Sets the questioning strategy prior to the interview
- Leads and controls the interview
- Asks the bulk of the questions
- Takes notes
- Operates the tape recorder

# **Secondary Investigator**

The secondary investigator assists and supports the primary investigator. Customarily, the secondary investigator has the following responsibilities during the interview:

- Takes thorough notes
- Forms additional questions while listening to the interview
- Identifies other subject areas to probe
- Follow up with questions after the primary investigator is finished

Tip

More than one person speaking while on tape can be impossible to comprehend upon review. Establishing who will ask questions and at what point in the interview, will limit the times one-person talks over another.

#### **Observers**

As a general rule, no more than two investigators should interview or interrogate an employee at one time. Observers, such as a trainee, the investigator's supervisor or a representative of the Attorney General's Office may observe the interview or interrogation. However, the observer should not participate by asking questions. On occasion, it is permissible to exchange roles, for example after a break. The identity and role of any observer should be noted on the recording and to the subject being interviewed. All persons who will be present during an interview must be included in the interview notice.

(Note: The Deputy Director having jurisdiction and the OIG shall be notified in advance when Wardens or Division Heads are to be interviewed. Generally, an investigator from the OIG will participate, especially if the subject of the interview is the accused.)

# Representation

**Department Employees -** Besides the primary and secondary investigators, the occasional observer and the interview subject, most interviews could have at least one more person present, the subject's representative. Peace Officers who are either a witness or accused have a statutory right to at least one representative, but no more than two. The investigator must understand the representative's role in the process. If a representative is present during the interview, he or she must not be connected to, or the subject of, the same investigation. Representatives are not relegated to the role of passive observers and are permitted to speak during interviews at appropriate and designated times. However, representatives cannot answer questions for employees.

Non Peace Officer have a statutory right to at lest one representative, but no more than two. The representation for non Peace Officer staff member(s) can be a lawyer or other person of their choosing.

Never tell an employee that he or she doesn't need a representative. When an employee has no representative present at the interview have the employee acknowledge on tape that he or she has chosen not to have a representative present. This will forestall a future accusation that you denied the employee the right to a representative.

**Non-Department Subjects** – Non-Department subjects, witnesses or complainants, should generally be interviewed in private. The investigator has the discretion to allow third party observers. However, the presence of friends or family can complicate the interview or skew its objectivity. Other times, attorneys representing complainants or non-employee witnesses may be present.

# **Defining Interview Objectives**

Before conducting the interviews, the investigator should form a clear understanding of what he or she wants to accomplish in the interview. Some common objectives are listed below:

- Identify other witnesses or accused employees
- Clarify allegations (determine specifically what occurred)
- Resolve discrepancies and inconsistencies
- Obtain information on motive or alibi
- Obtain information on guilt or innocence
- Close loopholes in previous statements

# **Preparing Questions**

Preparing questions in advance of the interview is one approach to conducting the investigation. Consult with peers, supervisors and experts for proper questions that will address the concerns of the specific investigation. A list of general guidelines will help form questions:

- Arrange questions in chronological order
- Specific questions should address each specific allegation
- Type the list of questions and leave room for notes
- Highlight key questions
- Give the interview partner a copy of the question list in advance. (Do not give the list to interview subject.)
- Check off questions only after receiving a **satisfactory** answer
- Review the list before conducting the interview

Remember *do not* rely solely on prepared questions. Listen carefully to responses and be prepared to follow up answers with appropriate questions that were not prepared or anticipated.

# **Taking Notes**

A common note-taking method for investigators appears in the illustration below. The information on the left of the vertical line is used to record the subject's answers to questions. The right side is used to make notations for follow-up questions.

| Subj: D. Jones  | I/O Smith<br>I/O Johnson<br>IA-03-708 |
|---|---------------------------------------|
| Date 8-9-03<br>Tape #2222-A                                 |                                       |
| Working control, inmate verbal<br>Abuse. Refuse to lock up. | Which inmate?                         |
| Saw Miller try to apply restraints                          | Any back up?                          |
|   |                                       |

Sample note-taking technique

# **Strategies for Questions**

The following guidelines will help the investigator conduct a smooth, professional interview:

- The primary investigator asks the bulk of the prepared questions
- The secondary investigator takes copious notes, writing any additional questions

- Subjects should be asked direct, specific questions to address each allegation
- Ask for specific admissions or denials from accused employees for each allegation, e.g., "Did you strike inmate Jones on the head with the bottle?"
- Ask each witness who denied seeing or hearing the allegation, "If Masterson had hit Jones on the head with the bottle, were you in a position to see it happen? Would you have seen or heard it?"

# **Beginning the Interview**

Precede interviews by completing a LEAD-IN sheet for each person being interviewed, if possible. The lead-in is a scripted guide for identifying each person present at the interview as well as other information which will be needed when writing the statement summaries. After filling out the lead-in sheet, begin the interview on tape by reading the lead-in aloud. Using the lead-in sheet will also ensure that the investigator provides the requisite information to accused employees; names of interrogators, identity of others present, nature of the investigation and required admonishments.

(Note: Remember that NRS 289.060 requires that:

- (b) Immediately before the interrogation or hearing begins, inform the peace officer orally on the record that:
  - (1) He is required to provide a statement and answer questions related to his alleged misconduct; and
  - (2) If he fails to provide such a statement or to answer any such questions, the agency may charge him with insubordination.

This is accomplished by reading the prepared Administrative Admonition onto the tape.

After reading the lead-in, give a brief explanation about the purpose of the interview. The investigator is *NOT* obliged to reveal any information that would jeopardize the investigation. However, accused employees are entitled to know the "nature of the investigation." Allow the subject to tell what happened in his or her own words, without interruption.

Be prepared to review documents or physical evidence with the subject. If a diagram of the incident location was prepared, use only a generic, sanitized version and have the subject fill in relevant information as the subject recalls it. This practice will keep one witness' recollection from molding to other witnesses' statements. Later, the investigator can create a comprehensive or summary diagram, if needed.

Ask each subject to show his or her location on the diagram in relation to the incident and the other parties' locations, if applicable. If not applicable, ask for specific information from the subject about their location. Then ask the subject if he or she was in a position to see or hear the act in question. Each allegation and all relevant issues should be addressed with each witness. Typical questions might be:

- Did it (specific allegation) happen?
- Did you do it? Did you see who did it?
- Who was present when it happened?
- Were you in a position to see or hear it if it did happen?

- Do you think the other witnesses were in a position to see or hear it?
- Could the act have occurred without your knowledge? (Explain)

It is important to establish the relationship between all parties present and involved at the incident.

# **Conducting Photo Line-ups**

An important goal of every investigation is to identify the accused employee or person. Identification takes many forms: name, description (physical and clothing), process of elimination or acknowledgment by an employee. When certainty of a subject's employee identification is in question, the investigator might prepare a photo display folder. If that is done, the manner for preparing such a folder is the standard for a criminal investigation.

The reliability of any identification will depend on how closely investigators follow guidelines. Creating proper photo display folders takes consideration, an adequate pool of photographs and some experience. Consider the following example:

An accused employee was described as male, Hispanic, 35 to 45 years old, no glasses and a moustache. All photos used in the display should meet these criteria.

If the investigation has focused on a specific employee, the other photos chosen should be similar in appearance to the accused. Displays are difficult to assemble when an unusual characteristic must be duplicated in all photos. Don't dissemble the photo folders after the investigation is done. They should become part of the addenda.

#### Dos and Don'ts of Photo Line-ups

- Do allow the subject ample time to view the display
- Do tape or digitally record the line-up
- Don't tell the subject if the "correct" person was or was not, identified
- Don't give hints or lead the subject in any manner during the identification
- Don't place the accused employee in the same window of multiple folders

According to 289.080, any interrogation of a staff member and Peace Officer will be limited to the alleged misconduct of the peace officer or staff member who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, the law enforcement agency shall notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter.

For example, during the interrogation, if the accused begins to provide false and misleading information, the new allegation of False and Misleading would have to be entered into an additional notice of interrogation with the provision of an additional 48 hour notice unless the accused wishes to waive the 48 hours. No questioning about the new allegation can be made.

#### SECTION VI: INTERVIEWING COMPLAINANTS AND WITNESSES

This section discusses points specific to interviews of complainants and witnesses, whether Department employees or not. In this discussion, the terms complainant and witness are used interchangeably.

#### **Interview Goals**

Interviews of complainants have four important goals:

- Identify all allegations of misconduct against Department employees
- Determine if any allegations of misconduct are against any non-Department employee
- Ensure that every allegation is addressed in the interview
- Resolve discrepancies between the complainant's initial complaint statement and any subsequent statements
- Identify all involved employees and additional witnesses

The complainant must directly address each and every allegation of misconduct. The investigator's basic questions will follow the Who, What, When, Where, Why and How format plus additional probing questions that will be determined by the nature of the investigation.

# IMPORTANT - An investigation will not be considered complete unless the complainant and the accused employee address each allegation.

It is not uncommon for a complainant's recollection to change from the initial time of the incident to the time of the interview. The investigator should not necessarily conclude the complainant is lying when this happens. Memory lapses or unconscious suppression, individual perspectives, elapsed time, conferring with others, etc., all contribute to the ability to recall events. Regardless of the cause, it's important to clarify and resolve any discrepancies between the complainant's various statements.

Include the following as part of the complainant interview process:

- Examine and photograph injuries, including areas where no visible injury exists but is alleged based on statements
- Obtain a medical release signature, if applicable
- Determine the reason for delays in reporting the misconduct
- Obtain additional witness information
- Determine the complainant's availability for follow-up interviews and willingness to testify at any subsequent hearings that may result
- Establish the complainant's motive for making the complaint. For example: Was the complaint made to reduce culpability in a criminal matter or because the misconduct actually occurred?

At the conclusion of the interview, remember to specifically verify the complainant has no more allegations or complaints. Don't ask leading questions to solicit more allegations. Some proper questions are:

Do you have any additional complaints, concerns or information to bring to our attention before we conclude the interview or is there anything you can tell us that will aid us in this investigation or that you think we should know?

If the complainant is a Department employee, Peace Officer or otherwise, the Admonition of Confidentiality must be read, reviewed and signed. A copy should be afforded to the complainant should they wish one.

# **Uncooperative Subjects**

Maintaining an objective, open mind will help on the occasions when interview subjects are uncooperative or agitated. Remain calm, understanding and professional during the interview. Most uncooperative subjects' behavior can be linked to a perception of victimization or a feeling of being treated unfairly. Certain phrases can help with a difficult interview and provide an opportunity for the subject to fully explain his or her observations and perceptions: Some examples:

- I see. Tell us what happened next
- I know I'm asking a lot of questions, but please understand that I was not there. I need you to fully describe the situation for me so I can understand what happened
- I'm sorry, would you please verbally state your answer? When you nod, the tape recorder won't pick up your answer. Thanks
- Are those your words or the employee's? Please try to remember and tell me the exact words the officer said, if you remember

Finally, when a particular question or area agitates the subject to the point that it's hampering the interview, move on to another area and come back to it later. The investigator might also consider taking a break to diffuse the situation and allow any party on either side the opportunity to step back and return in a more neutral position.

Consult a supervisor or the OIG when experiencing an uncooperative subject. Document all good-faith attempts to resolve the matter. These notes should be part of the Chronological Record.

# Writing the Statement

Investigators are required to write a paraphrased summary of each interview. Writing the summaries is both a tedious and challenging task to do well. Unlike verbatim transcriptions, paraphrased summaries have the potential for bias, whether intentional or not.

The best time to summarize statements is immediately after the interview. At the conclusion of the interviews, time and circumstances permitting, the investigator should summarize the

subject's statement in writing. The biggest challenge will be writing an objective, accurate account of the subject's statements. The statements should be free of the investigator's opinion or biases. Similarly, the investigator must be cognizant to avoid the omission of information.

## **Recants**

When a complainant recant the allegation(s), the investigator shall document the recantation in the subject statement and proceed with the completion of the entire investigation. It is the investigator's responsibility to ensure the recantation is consistent with established facts. If the recantation conflicts with established facts, the investigator shall question the complainant indepth and ensure the complainant is not being unduly influenced by other factors, such as fear of reprisal or intimidation. If it is determined that intimidation is a factor, the investigator shall immediately take appropriate action to stop the intimidation, investigate the additional allegation and consult with the OIG.

#### **SECTION VII: EMPLOYEE INTERVIEWS**

Special considerations for conducting employee interviews require a separate discussion from non-employee interviews in the previous section. The primary differences lie in protections afforded to peace officers under NRS Chapter 289, as well as, other protections afforded to all employees under NRS 284, labor codes and other laws. The better the investigator knows and understands these various provisions, the better prepared they will be to conduct an employee interview and deal with the variety of situations that arise. The same standards apply to all employees when it becomes necessary to conduct investigations regarding allegations of employee misconduct. Consequently, all complaint investigations against employees will be handled in the same manner, regardless of having or not having peace officer authority. Only the applicable rights under the specific provisions for each NRS 289 and NRS 284 will be applied to the person being interviewed and/or interrogated.

## **Employee Witnesses**

All Department employees not accused of misconduct, are obligated to answer questions in Department criminal and administrative investigations. Indeed, the investigator, as the representative for the Director, can compel reluctant employee witnesses to answer questions or face disciplinary sanctions. All employees are provided the following protections:

- Reasonable hours for interview
- Compensation for interviews conducted outside regular work hours
- Notification with a reasonable allotment of time for obtaining a representative should he/she choose

Neither civilian nor sworn *witnesses* have a right to know the nature of the investigation. The investigator may use discretion to reveal those parts of the investigation believed the witness must know in order to answer the questions. However, should the investigation or questions turn toward the witness as an accused, this employee has a right to know the nature of the investigation. (*See NRS 289.060*).

When asking employees to recall incidents, dates, times, etc., it is appropriate to provide them with appropriate relevant reports, just prior to convening or during the interview. Allowing the employee to be reacquainted with reports that the employee wrote personally will help the interview proceed in a more orderly fashion. If such disclosure could hamper the investigation, consider explaining to the employee the need for confidentiality. *The investigator is not obligated to provide employees with a personal copy of any document to keep.* 

# **Accused Employees**

The most challenging interview during any investigation is the interview of the accused employee. The investigator must clearly understand the bounds of authority as well as the protections retained by every employee.

**Nature of the Investigation** – Accused employees, unlike employee witnesses, have a right to know the nature of the investigation at the time of the interview. For example, in a complaint involving discourtesy, the investigator would meet the requirement by saying, while on tape and prior to asking any questions:

I am conducting an investigation regarding discourtesy alleged against you by John Smith. According to Smith, it occurred during training you and he attended on April 7, 2002, at the POST Academy in Carson City.

The lead-in form provides a check box to remind the investigator to include an explanation of the nature of the investigation.

Compelled Statements – Department employees are protected like any other person by rights that are guaranteed under the state and federal constitutions. This includes the protection against self-incrimination. Nonetheless, employees can be compelled to answer questions for administrative purposes only. If for example, an employee being investigated for misconduct that potentially includes elements of criminal activity declines to waive his or her rights as prescribed by Miranda, the criminal investigator must handle that investigation from that point without an interview of the suspect employee.

The investigator handling the Administrative Investigation will address separately, affording all the rights the employee is entitled to and when appropriate, read to the employee the Administrative Admonition form. When this is done, the compelled statement under the threat of insubordination or another disciplinary action constitutes a statement made under duress, which cannot be used against the employee in a criminal proceeding. The statement can however, be used in the development of administrative findings by the Adjudicator of the matter at hand.

# **Controlling Difficult Interviews**

The vast majority of interviews will proceed smoothly with all parties (employee, representative, etc.) understanding the process and the need for the interview. If and/or when the investigator is faced with a confrontational or belligerent employee and/or representative, the following suggestions may prepare the investigator to better handle the situation:

- When the employee and/or representative tries to use the interview as a forum for making demands or legal challenges to the investigation, respond by saying, "Thank you. Your objection has been noted on the tape, now let's continue with the interview"
- Don't debate the relative merits of the objections some objections may be addressed with simple explanations
- If objections continue, repeat that the objection will be noted and direct the employee to answer the questions
- When the representative answers questions for the employee, remind the employee and the representative that the employee must answer the question. Representatives may not be conduits for employee's answers. If it sounded as if the employee was leaning toward

- a different answer prior to the representative's prompting, record/document the prompted response, but note the prompting in the statement summary
- An explanation to employees who are refusing to answer questions might be as follows: "The question I am posing is proper and relevant to the investigation. You are obligated to answer and failing to do so could result in an additional charge of insubordination. You, the employee, will have to face the consequences, not your representative"
- When these suggestions fail, order the employee to answer the question
- When the representative persists with obstructive behavior after being cautioned, begin dealing directly with the employee exclusively
- If the representative gives the employee improper advice (e.g. "You don't have to answer that question."), the investigator may tell the employee that the advice is improper
- Employees have a right to request breaks during the interview. As the facilitator of the interview, the investigator gets to call the breaks, with consideration to the employee's needs. If an employee asks for a break after a question is asked, the investigator may direct the employee to answer the question before breaking the interview. The need for a break should not be used as a ploy to confer on every question outside the investigator's presence.

Note: NRS 289.080 does specify the following

3. A representative of a peace officer must assist the peace officer during the interview, interrogation or hearing. The law enforcement agency conducting the interview, interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer.

Knowledge, confidence, experience and professionalism will help overcome difficult situations. It is important to note that the majority of representatives understand their roles and conduct themselves in a professional and cooperative manner. In many cases, their presence facilitates the interview.

# **Employees Reversing Statements**

Accused employees will sometimes return from an interview break or a day following an interview and want to change all or part of a statement, perhaps making a complete reversal of the previous statement. When an employee wants to change a statement after it has been made, include the original and the new version in the statement summary. With both statements, the finder of fact (employee's Division Head) will be better able to evaluate the truth of the matter. Consider the following examples of how to deal with a changed statement:

EXAMPLE 1 – Officer Jones stated that he never saw Officer Smith, strike the complainant in any manner. During the read back, the employee asked to revise that part of his statement. It might be written as follows:

"During the read back of his statement, Jones stated that he wanted to change his statement to reflect that he may have seen Smith strike the complainant, but only after the complainant took an aggressive stance."

EXAMPLE 2 – Officer Jones stated that he never saw his partner, Officer Smith, strike the complainant in any manner. After a conference with his employee representative, Jones wanted to change his statement. It might be written as follows:

"After returning from a break, Jones stated that he wanted to change his statement to reflect that he may have seen Smith strike the complainant, but only after the complainant took an aggressive stance."

# **Concluding Employee Interviews**

Once the questioning has concluded, read each allegation that pertains to the employee being interviewed and ask the employee if he or she admits or denies the allegation. This practice will ensure that the investigator addresses every allegation and will help clarify any ambiguities present in the employee's statement.

**Ask for Questions** – All employee interviews should conclude with the investigator extending the opportunity for input from the participants:

- Ask the representative, "Do you have any questions?"
- Ask the employee, "Do you have any other information to tell us that is pertinent to this investigation or do you have any questions?"

**Give Confidentiality Order** – While the interview is still being recorded, order the employee not to discuss the investigation with anyone other than his or her representative, attorney, or the investigators assigned to the case. Remind the employee that violating this order could result in a charge of insubordination. Have the employee sign a confidentiality statement.

#### TIP

Also admonish the employee representative and the employee not to provide dubs of their interview tape recording to anyone else other than an attorney representing the accused in the investigation or in the subsequent disciplinary action.

**Storage of Audio Recordings** – Recordings of interviews from all investigations shall be secured and returned with the Investigative case file at the conclusion of the investigation for storage in the OIG pursuant to office procedure. It is the responsibility of each investigator and Division Head to ensure that each tape is properly secured.

## SECTION VIII: WRITING THE REPORT

The facts of an investigation are communicated through a written report. The final report is the culmination of the investigation. A poorly investigated complaint cannot be rehabilitated by a well-written report. Similarly, a poorly written report could invalidate the best investigation. Therefore, both investigative skill and writing ability are equally important. This section will outline complaint investigation report formats and give tips on writing style.

#### STANDARD "REPORT OF PERSONNEL COMPLAINT INVESTIGATION"

All Class 3, 4, and 5 complaint investigations will be reported in the Standard "Report of Personnel Complaint Investigation" format. Class 1 and 2 complaint investigations will be reported in the Standard "Report of Personnel Complaint Investigation" format, except in those instances when a Short Form Report is appropriate. As in all matters, this is a guideline and referenced there is always an exception to every rule, but any exception should be reviewed with the IG or his or her designee.

#### SHORT FORM "REPORT OF PERSONNEL COMPLAINT INVESTIGATION"

Selected Class 1 and 2 complaint investigations may be documented in the short form "Report of Personnel Complaint Investigation" format. Examples where the short form format would be appropriate for use include incidents where there are minimal issues in dispute or where the issue is performance based with few witnesses and there is an admission by the accused. The Short Form Report is used to document and adjudicate complaint investigations that involve no significant liability issues. The assigned investigator/supervisor should conduct an investigation, as appropriate, to ensure there is no other misconduct.

#### SUBSTANDARD PERFORMANCE

Division Heads should ensure that non-misconduct performance related issues are resolved without conducting lengthy investigations and in a manner consistent with prescribed personnel guidelines.

#### STANDARD REPORT FORMATTING

Complaint investigations are reported in a standard Memo format using Times New Roman 12 pt font.

**DATE**: July 1, 2002

**TO**: Warden, Northern Nevada Correctional Center

**FROM**: Paul Armstrong, Investigator, NNCC

Raymond Jones, Investigator, NNCC

SUBJECT: REPORT OF PERSONNEL COMPLAINT INVESTIGATION

*IA-2002-XXXX-XX* 

#### **COMPLAINT**

(Note that the **Complaint Section** provides the reader with three preliminary points:

- Source of the complaint
- Names, identifying numbers, information and assignments of the accused employee
- Nature of the allegations reported.

Inmate Complaint alleging UNBECOMING CONDUCT and UNAUTHORIZED USE OF FORCE against Correctional Officer John Smith.

(Note that the type of complaint in this section should be pulled from the Major headings of the AR 339 Prohibitions and Penalties.)

#### **ACCUSED STAFF**

Last Name, First Name, Involved Institution

#### SAMPLE REPORT FORMAT FACE SHEET HEADING

The report begins by providing the reader with general information about the complaint and leads into more specific information from the varying perspectives. The example above tells the reader that the complaint is an officer against whom an inmate alleged one or more acts of UNBECOMING CONDUCT and one or more acts of UNAUTHORIZED USE OF FORCE.

**SOURCE** - The source of the complaint refers to who alleged the misconduct, Department, Inmate, Public. If the complaint is a mixture of allegations by a member of the public, an inmate, and by the Department, classifying it as a public complaint takes precedence. If the complaint involves allegations by an inmate and the Department, it would be classified as an inmate complaint.

**ACCUSED EMPLOYEES** - Each employee against whom allegations were alleged in the same incident should have separate investigative files, each with a distinct sequential number after the IA number.

NATURE OF MISCONDUCT - The nature of the misconduct alleged against the employee should be included in the paragraph. Case assignment sheets will include allegations identified by the OIG listed in numerical order. If you identify additional allegations, they should be drawn from Administrative Regulation 339 (CODE OF ETHICS; EMPLOYEE CONDUCT; PROHIBITIONS AND PENALTIES) and added in numerical sequence. Contact the OIG if you have questions concerning a particular allegation.

**Signature Block** – The report's signature block is to be placed at the bottom left side of the face sheet. It should allow for the signatures of each investigator and the approving supervisor.

| Paul Armstrong, Sergeant            |
|-------------------------------------|
| Raymond Jones, Sergeant             |
| APPROVED:                           |
| John P. Simpson, Lieutenant<br>NNCC |

SAMPLE SIGNATURE BLOCK

**Headers** - Subsequent pages should have a header (disabled on the first page) that includes the page number. If you place this as a Header by means of the personal computer, you will save yourself the frustration of retyping page headings after you enter additional information.

| IA-2002-XXXX-XX |  |
|-----------------|--|
| Page 2          |  |
|                 |  |

SAMPLE HEADER FORMAT

**Margins** - One inch all around for all pages.

## **Report Narrative Sections**

Complaint investigation reports are divided into six distinct sections separated by the following headings:

- **SUMMARY**
- WITNESS LIST
- INVESTIGATION
- INVESTIGATOR'S NOTES
- ADDENDA

Each section is discussed below.

**Summary Section:** Beginning on a new page immediately after the COMPLAINT section. The **SUMMARY** section should provide the reader with an overview of the complaint, beginning with a short chronological introduction that leads the reader to the first and subsequent allegations. In many instances a copy of the NOTIS entry can be inserted here with additional details if needed.

It is important to identify the perspective from which the summary is written. Generally, the preferred perspective uses facts not in dispute, which are supported by references to documents or other facts included in the Addenda. Occasionally, a summary cannot be written from a neutral perspective. The solution is to choose a perspective and clearly identify it for the reader.

#### SUMMARY

According to Complainant Inmate Brown, on June 11, 2002, at approximately 5:00 PM, he was standing outside the culinary with Inmate Johnson, when Correctional Officer Bright approached and called him a "bitch".

#### **ALLEGATION 1**

Inmate Brown alleged that on June 11, 2002, at approximately 5:00 PM, Correctional Officer Bright engaged in UNBECOMING CONDUCT when Bright called Brown a "bitch."

(Note that only the primary heading from the Prohibitions and Penalties list is used.)

All allegations are specifically stated for the first and only time in the **SUMMARY** section. For future reference in the report, each allegation is numbered following a chronological sequence. Do not change the allegation numbers once the numbers are established.

Allegations that occur at the same place and time may be stacked together and addressed concurrently in subsequent interviews. This sample entry would follow immediately from the previous allegation. When allegations are made regarding additional misconduct that occurred at

a different date or place, take the reader to the next occurrence by means of a short transitional narrative.

## Sample Summary section with transition to subsequent allegation

Approximately two hours later, Inmate Brown was in his cell lying on his bed when he received a note from an unknown Correctional Officer. Brown read the note and discovered that it contained the message, "Keep your mouth shut or you'll be sorry."

#### **ALLEGATION 2**

Complainant Inmate Brown alleged that on June 11, 2002 at approximately 7:00 PM, an unknown Correctional Officer engaged in UNBECOMING CONDUCT when the officer sent a note that stated, "Keep your mouth shut or you'll be sorry."

Notice in the examples above how the transition takes the reader to later in the evening in the complainant's cell and lists the allegation.

**Referencing information -** It is necessary here to pause and mention the four options for referencing information:

INDENTED NOTES – Indented notes clarify information or provide the reader with information regarding some fact immediately preceding the indented note itself. Use indented notes when it is important for the information to be directly connected to the source, for example, when an allegation is added to the investigation. Indented notes begin one tab space to the right from the current margin. Indented notes are acceptable in both the SUMMARY and INVESTIGATION sections.

#### Sample Indented note

#### **ALLEGATION 2**

Complainant Inmate Brown alleged that on June 11, 2002 at approximately 7:00 PM, an unknown Correctional Officer engaged in UNBECOMING CONDUCT when the officer sent a note that stated, "Keep your mouth shut or you'll be sorry."

(Note: This allegation was not alleged during the initial interview. It was added during a subsequent interview on June 13, 2002.)

INVESTIGATOR'S NOTES – Investigator's Notes are used to provide the reader with pertinent information related to information contained in the SUMMARY or

INVESTIGATION sections. Investigator's Notes and Footnotes serve the same purpose and have equal weight in significance. You have the discretion to decide whether to use an Investigator's Note or a footnote.

#### TIP

The Footnote may be preferable over the Investigator's Note unless the information in the note is lengthy or unreferenced in the body of the report.

A reference in a statement to a doctor's opinion of a complainant's injury might appear as follows:

## Investigator's Note reference

The complainant stated that the tenderness to his left rib cage, his sore thumb and the abrasion on his forehead were all caused by blows from CO Smith's fist. (Investigator's Note 1)

Investigator's Notes are numbered sequentially through the entire report. If a supplemental report becomes necessary after the first investigation is completed, the numbering will pick up from the last Investigator's Note number in the first report. The numbering of footnotes and Investigator's Notes are separate and unrelated. The content and uses for Investigator's Notes and footnotes will be discussed in the INVESTIGATOR'S NOTES section.

FOOTNOTES – Footnotes are a shorter, simpler, and a preferred alternative to Investigator's Notes. By taking advantage of the word processor's capabilities, the writer will find footnotes easier to use and the report easier to edit. Footnotes are easier for the reader, too. Use footnotes for the same purposes as Investigator's Notes, keeping in mind the length of the notes. Footnotes that carry across several pages are impractical and instead should be referenced as Investigator's Notes.

## Sample of footnote's use

The complainant stated that CO Smith grabbed him from behind and placed a chokehold around his neck. <sup>1</sup>

<sup>1</sup>Officer Smith - 5'5", 150 lbs Complainant – 6'5", 220 lbs

ADDENDA REFERENCES – Addenda references are used any time the writer wants to alert the reader to a supporting document related to the investigation. Addenda may be referenced in the SUMMARY and INVESTIGATION sections as well as in footnotes and Investigator's Notes. The format for Addenda references is similar to that of Investigator's Notes.

Here are references to an Incident Report, a Use of Force Report, and a Medical Report:

## Addenda references

CO Smith stated that the inmate fight started at 7:00 AM. (Addendum 1)

The inmate received a 3-second blast of OC spray and was subsequently examined by medical personnel.

(Addenda 2-3)

•

• (Addendum 4, p.205) If an addenda item already has a page number such as, a court transcript, you may refer to the page number of the transcript.

*Interviewed Person List Section:* Beginning on a new page immediately after the SUMMARY section. The list includes every person who was interviewed for the complaint and every investigator who took part in the interview or collected evidence. Employee representatives and interview observers need not be listed.

FORMAT – The Interviewed Person List is used primarily by officials who are responsible for representing the Department at hearings associated with the complaint and its investigation and subsequent adjudication of findings. The names should appear in alphabetical order by last name. Dates and times of interviews, tape numbers, if applicable and the page on which the subject's interview begins are listed for each person, except investigators.

| Non-Employees         | <b>Employees</b>             | <u>Inmates</u>        |
|-----------------------|------------------------------|-----------------------|
| Last name, First name | Last name, First name        | Last Name, First Name |
| Address               | Rank/Title                   | NDOC #                |
| City, State, Zip Code | <b>Identification Number</b> | Assigned Institution  |
| Day Phone             | Assignment                   |                       |
| SSN or NDL            | Work Phone                   |                       |

Interviewed List should have the following appearance:

| IA-2002-XXXX-XX<br>Page 27  |                  |           |      |  |
|---|------------------|-----------|------|--|
|   | Interviewed LIST |           |      |  |
| Name  | Date Time        | Tape-Side | Page |  |
| Adams, John E.<br>Sergeant<br>NNCC<br>(775) 987-6543                                | 6/15/02 1330     | 12378-A   | 23   |  |
| Cartwright, Maxwell G.<br>123 Elm Street<br>Carson City, NV 89711<br>(775) 123-8907 | 6/15/02 1440     | 23456-A   | 10   |  |
| Armstrong, Paul<br>Intake Supervisor<br>Employee No. XXXX<br>NNCC                   | Investigator     |           |      |  |

### TIP

The easiest way to create a Witness List is by using the Table command of the computer. You will need four columns and as many rows + 1 for the number of persons to enter. The extra row is for the labels at the top. Make the first row a HEADER in your table and it will repeat on subsequent pages.

**Investigation Section:** Beginning on a new page immediately after the INTERVIEWED LIST section. The **INVESTIGATION** section consists of the summaries of interviews of all the persons involved in the complaint, as well as the investigator's investigative insights contained in footnotes and Investigator's Notes. The **INVESTIGATION** section is the core of the report.

ORDER OF INTERVIEWS - The investigation and report should begin with the complainant's interview and end with the interview of the accused. Thus, the report will flow from the complainant's perspective to the accused. The investigator has the discretion for the order of interviews that fall between the complainant and the accused. Generally, use the witnesses' point of view as a gauge. If one witness' statement is more closely related to the complainant, then place that interview nearer the complainant's than the accused. When a witness tends to support one allegation but refutes another, use discretion and place the interview in a position that best fits the flow of the investigation.

INTERVIEW FORMAT – Each interview should begin on its own page and consist of three

parts: Heading, Lead In, and Statement.

The **HEADING** is placed at the top of the page and contains the personal information of the subject. The content is slightly different depending on whether the subject is an employee, inmate, or non-employee.

Employee interview heading

IA-2002-XXXX-XX Page 5

#### **INVESTIGATION**

(1<sup>st</sup> page of investigation section only)

Smith, John E., Correctional Officer, Employee No. XXX, Northern Nevada Correctional Center, (775) 123-3456

Non-employee interview heading

IA-2002-XXXX-XX

Page 8

Jones, Paul, 123 South Elm Street, Carson City, NV. 89711, (775) 222-3333

Inmate interview heading

IA-2002-XXXX-XX

Page 8

Smith, Mike #XXXXX, Inmate, High Desert State Prison

The **LEAD IN** begins each interview. It should include the following information:

- Subject's name
- Date/time of interview
- Location of interview
- Investigator's name (ID Number and assignment if mentioned for the first time)
- Employee representative's name, if any
- Any other observers present
- Tape number and side or digitally
- Administrative (and Criminal if appropriate) admonishments.

If the subject was interviewed more than one time, begin a second lead-in in a new paragraph

Revised September 2013

with the information specific to the re-interview. The multiple lead-ins will serve to tell the reader that the subject was interviewed more than once. When it is important for the reader to know what was said in the first interview versus the second, make the distinction in the text. When such a distinction is not important for the reader to know, you will not need to articulate the distinctions. Place an addenda reference at the end of each lead-in paragraph to reference the signed Employee Advisement form, if one was signed and is to be included with the report as addendum.

NOTE: DO NOT include the admonition information if the employee was not read the admonition or given an admonition order to answer.

## Sample Lead In with Admonition

Today's date is June 25, 2002, and it's approximately 0730 hours. This is Criminal Investigator Jane Doe and I am present at High Desert State Prison, Warden's Conference room to conduct an in person digitally recorded Interrogation/Interview with Senior Correctional Officer John Smith. Representing Officer Smith today is Henry Redgrave of the Employee's Association. This is being recorded on A02-34 and you are both aware it is being recorded correct? Officer Smith you were provided with a Notice of Interrogation/Interview for an Administrative Investigation on June 17, 2013. That notice afforded you at least 48 hours to obtain an employee representative is that correct. The Admonition of Rights was read and signed by Officer Smith, with acknowledgement on the record from Officer Smith that he is aware he must provide a statement and answer questions related to the misconduct allegation(s) and that if he fails to provide such a statement or to answer any such questions, he may be charged with Insubordination. The Admonition of Confidentiality was read onto the record and signed by Officer Smith.

Officer Smith, how long have you been with the Department? Where are you currently assigned and what is your duty station, shift assignment and work schedule. In the performance of your assigned duties, have you read Administrative Regulations and operational procedures.

**STATEMENTS** are paraphrased summaries of the subject's recorded statement. Write the statements in the 3<sup>rd</sup> person (he, she, it, they), past tense. Use quotes sparingly and only to directly quote a specific phrase that has particular significance to the investigation. Writing an accurate, objective narrative that captures the essence of the subject's statement is the biggest challenge in writing the investigation. The process begins with a well conducted interview.

(If needed, subsequent reviewers/adjudicators should listen to the tape recording for precise content, including nuances.)

Organizing information is vital to a well written interview. Allegation headings are used to divide a statement summary into parts that are relevant to individual allegations. Each statement part is simply numbered according to the numbers previously assigned to each allegation in the SUMMARY section (e.g., ALLEGATION 1, ALLEGATION 2, etc.). Include *ALL* parts of a

statement relevant to a particular allegation under the specific numbered allegation heading. The reviewer/adjudicator should not have to depend on any other information from another part of the statement in order to evaluate a particular allegation. When information from a statement is pertinent to another allegation(s) separated by time or location, you will have to repeat the relevant information.

Based upon allegations alleged in a typical complaint, the interview of an officer might appear as follows:

Here are some more guidelines for organizing written statements:

IA-2002-XXXX-XX Page 5

# Bright, Alan C., Correctional Officer, Employee No. XXX, Northern Nevada Correctional Center, (775) 321-7654

On June 17th, 2002, Senior Correctional Officer Alan Bright was provided with a Notice of Interrogation/Interview Administrative Investigation by Criminal Investigator Jane Doe. Officer Bright requested his right to 48 hours of notice and the right to have an employee representative present. Officer Bright listed "TBD" as his employee representative. (Addendum 1) The interview was conducted on June 25<sup>th</sup>, 2002 at 0730 hours at Northern Nevada Correctional Center, Operations. Officer Bright was represented by Henry Redgrave of the Employee's Association. The interview was digitally recorded using A02-34 with Officer Bright and his representative's knowledge and consent. Admonition of Rights and Admonition of Confidentiality were both read and signed by Officer Bright. (Addendum 1) Admonition of Confidentiality was read and signed by the employee's representative, Henry Redgrave. (Addendum 1)

Prior to the start of the interview, Investigator Doe read to the peace officer NRS 289.060 subsection 3 part B numbers 1 and 2.

Bright stated that on June 11, 2002, he was assigned to the Tag Plant with Officer Hanna. They were assigned general security duties. They remained together during the entire shift.

#### **ALLEGATION 1**

Bright refreshed his recollection by reviewing his informational report. Bright said Officer Hanna was with him during the shift and was present throughout. They were never in the vicinity of inmate Brown's housing unit or cell. The nearest approach to Inmate Brown's housing unit is approximately 500 yards north of the Tag Plant.

Bright denied that he called Brown a "bitch" or that he made any derogatory remark to him. Bright stated that he has not even seen Inmate Brown since his return from vacation on June 9, 2002.

#### **ALLEGATION 2**

Officer Bright stated that he has not been in or around Inmate Brown's housing unit since he returned to work on June 9, 2002. Additionally, he indicated that he has not sent any correspondence using interdepartmental mail other than his time sheets.

Bright denied sending any messages to Inmate Brown. Further, he denied having any knowledge of Brown receiving any type of note.

SUBJECT HAS NO CONNECTION TO ALLEGATION – Include all allegation headings in every interview statement. When a subject has no connection to a particular allegation, explain briefly that the subject was not present or had no pertinent information.

*ADDITIONAL INFORMATION* – Create a heading called **ADDITIONAL** at the end of statements to summarize important information relevant to the investigation but not directly related to the allegations. For example, a witness's statement about a pattern of sleeplessness, depression or gambling in the year leading up to a theft allegation.

*DENIALS and RECANTATIONS* – Include any denials or recantations under each applicable allegation heading. When a complainant recants, be sure to include the reason.

*Investigator's Notes Section:* Beginning on a new page immediately after the last statement in the investigation. This is the page on which the reader will find the information referenced in the SUMMARY or INVESTIGATION sections as an Investigator's Note.

#### TIP

The source for many investigator notes and footnotes will come from the Chronological Record, if the Investigator has done a thorough job of log documentation.

Format – The Investigator's Notes page should have the following appearance:

#### **INVESTIGATOR"S NOTES**

(This heading on 1<sup>st</sup> page only)

- 1. Franklin and Sterling were assigned to NNCC Tower 2 at the time of this incident. Franklin was subsequently transferred to the Tag Plant and Sterling to Classification.
- 2. Burns identified Franklin from the Photo Display Folder as the officer who unnecessarily pointed a gun at Inmate Jones. Burns identified Sterling from a Photo Display Folder as Franklin's partner. (Addenda 8-9)

#### Sample Investigator's Notes page

*USES FOR NOTES* – Below is a list of uses for footnotes or Investigator's Notes. Remember, footnotes are preferred, but when the note is lengthy or un-referenced, it is better suited as an Investigator's Note. Place un-referenced Investigator's Notes at the end of the Investigator's Notes page.

- Explain discrepancies or changes in allegations appearing on the original Standardized Complaint form and the completed investigation
- Clarify ambiguous or conflicting statements made by subjects

- Location and description of evidence seized and or stored
- The status of any criminal case
- How the incident was resolved that day (e.g., placed on administrative leave, reassigned, etc.)
- In Use of Force or aggravated cases, the height and weight of accused and complainant
- Why any witnesses or complainants were not interviewed
- Observations of injuries or lack of injuries by the investigator. Include the date and time
  the injuries were observed and the amount of elapsed time between the incident creating
  the injury and the time observed
- Any reenactments performed
- Additional searches for evidence, witnesses, etc
- Sobriety and other test results
- Investigating Officer's observations (lighting, conditions, etc)
- Reason for delay in investigation
- Explanation of missing addenda items pertinent to the investigation
- Gang information of witnesses or complainant, if relevant
- Criminal history record information of witnesses or complainant, if relevant
- Foundation for photographs: dates, times, location, photographer and a label of what is being depicted. For example, "Complainants right inner thigh." The investigator should not interpret the photographs; leave that to the adjudicator
- Foundation for medical treatment: date, time, treating physician, diagnosis (if any), prognosis (if any), expert opinion (if any)
- How and when Department employees were identified (e.g., by photo display folder, description or their own statements)
- Forwarding of the case to the OIG for review and/or presentation to the Attorney General's office.

Addenda Section: Beginning on a new page immediately after the last entry in the INVESTIGATOR LIST. The ADDENDA lists all documents referenced in the report. Addenda items should be numbered AND listed in the order they are referenced in the report. Include only the documents that are referenced as part of your Addenda. Other documents not referenced, such as signed statements or computer printouts, should be retained in the Investigative Case File. Keep the list of Addenda items simple but descriptive. You will assemble the Addenda in the same order as it is referenced and listed. An Addenda list should have the following appearance:

IA-2002-XXXX-XX Page 28

#### **ADDENDA**

- 1. Correctional Officer Alan Bright's Notice of Interrogation/Interview Administrative Investigation, Admonition of Confidentiality and Admonition of Rights forms (3 pages)
- 2. Daily Shift Activity Report (DSAR), Bright and Hanna, June 11,2002 (2 pages)
- 2. Complaint Advisory Form, Brown (1 page)
- 3. Photographs of Northeast Corner of Yard 3 from Tower 2 (5 pages)

## Sample Addenda list

The pages of the Addenda list are the last pages of the report.

ASSEMBLING ADDENDA – All referenced Addenda items should be assembled and numbered in order of reference in the report. Mark each page of an Addenda item in its lower *right* corner with ADDENDUM sequence #. When the item is multi-paged, also sequence each page. From the example above, it would read in the lower right corner ADDENDUM 1 Page 1 of 2, ADDENDUM 1 Page 2 of 2. Do not try to number Addenda too soon because it will change often.

#### TIP

Place a copy of the final, assembled addenda in the Investigative Case File, in the event the original addendum becomes misplaced.

**ALLEGATION LIST** – Since the allegations are listed only once in the SUMMARY section of the report, it is helpful to future readers/adjudicators to have a list of the allegations for reference while reading the report. Creating the list is a simple process of copying and pasting the allegations from the SUMMARY section onto a new document. Again, the Allegation List is NOT a page of the report, merely a helpful tool for later readers. *Allegation lists should be placed with the original investigation report for use by the adjudicator.* 

|                      | For Adjudicator's Use Only  |
|----------------------|---|
|                      | IA-xxxx   |
|                      | ATT ECONOMIA  |
| Allegations List     | ALLEGATION 1  |
| Aueguions Lisi       | Inmate Brown alleged that on June 11, 2002, at approximately 5:00 PM, Correctional Officer Bright engaged in UNBECOMING CONDUCT when Bright called Brown a "bitch."   |
|                      | ALLEGATION 2  |
| Pavisad Santambar 20 | Complainant Inmate Brown alleged that on June 11, 2002 at approximately 7:00 PM, an unknown Correctional Officer engaged in UNBECOMING CONDUCT when the officer sent a note that stated, "Keep your mouth shut or you'll be sorry," |
| Revised September 20 | neep your mount state or you it be sorry.   |

## SHORT FORM REPORT FORMATTING

Short Form Reports are reported in a standard Memo format using Times New Roman 12 pt font. The face sheet is identical to the Standard Report Format.

**DATE**: July 1, 2002

**TO**: Warden, Northern Nevada Correctional Center

**FROM**: Paul Armstrong, Investigator, NNCC

Raymond Jones, Investigator, NNCC

SUBJECT: REPORT OF PERSONNEL COMPLAINT INVESTIGATION

IA-01-XXX

## **COMPLAINT**

(Note that the **Complaint Section** provides the reader with three preliminary points:

- Source of the complaint
- Names, identifying numbers, information and assignments of each accused employee
- Nature of the allegations reported.

For an investigation with two accused employees, the **Complaint Section** might appear as follows:)

Inmate Complaint alleging UNBECOMING CONDUCT against Correctional Officer John Smith, Employee No. XXXX, Northern Nevada Correctional Center.

Department complaint alleging NEGLECT OF DUTY against Correctional Sergeant Bob Jones, Employee No. XXXX, Northern Nevada Correctional Center.

(Note that the primary and sub heading from the Prohibitions and Penalties list are used.)

## **ACCUSED STAFF**

Last Name, First Name, Involved Institution

**Signature Block** – The report's signature block is to be placed at the bottom left side of the face sheet. It should allow for the signatures of each investigator and the approving supervisor.

| Paul Armstrong, Sergeant            |  |
|-------------------------------------|--|
| Raymond Jones, Sergeant             |  |
| APPROVED:                           |  |
| John P. Simpson, Lieutenant<br>NNCC |  |

The Short Form Report is used to document and adjudicate complaint investigations that involve no significant liability issues. The assigned investigator/supervisor should conduct an investigation, as appropriate, to ensure there is no other misconduct. The Short Form headings are as follows:

- Summary (Brief summary of incident or issue)
- Allegation(s)
- Appropriate investigator notes
- Addenda
- Classification
- Rationale
- Corrective/Disciplinary Recommendation
- Deputy Director Concurrence
- Employee Notification

## **SUMMARY**

On February 11, 2003, Inmate Smith alleged in grievance # XXXXXX that Officer Jones called him a punk.

#### **ALLEGATION 1**

Inmate Smith alleged that on February 11, 2003, Officer Jones engaged in UNBECOMING CONDUCT when Jones called him a punk.

**CLASSIFICATION**: SUSTAINED

AR 339.05 Subsection 18 Unbecoming Conduct C. Unprofessional remark to an

inmate. CLASS 1

**RATIONALE**: Jones admitted the allegation. The conduct alleged in the sustained allegation constitutes a Class 1 offense in the Class of Offense Guidelines. The Chart of Corrective/Disciplinary Guidelines recommends a sanction in the range of Verbal Counseling to Written Reprimand for a first time offense. This is the first sustained allegation of misconduct against Officer Jones. Jones is an experienced officer who should understand the importance of professional demeanor. In this instance it is clear that inmate Smith became unruly and obnoxious and C/O Jones became frustrated and spoke inappropriately. Jones reacted poorly due to a momentary lapse in judgment in a stressful situation. In keeping with the philosophy of progressive discipline, a sanction at the low end of the scale is appropriate.

**CORRECTIVE/DISCIPLINARY RECOMMENDATION:** Verbal Counseling.

#### **DEPUTY DIRECTOR CONCURRENCE:**

On March 30, 2003, Warden Doe discussed the Corrective/Disciplinary recommendation with the Department Deputy Director who concurred with the recommendation.

## **EMPLOYEE NOTIFICATION:**

On April 2, 2003, Warden Doe met with C/O Jones and notified him concerning the outcome of the investigation and the recommended Corrective/Disciplinary action. Jones was provided a copy of the "Result of Adjudication Report".

## SECTION IX: SPECIAL CONSIDERATIONS

The following section is offered to the investigator to provide additional information and insight into items that have been previously discussed. Also, it is provided to reiterate some of the more important aspects of conducting investigations and to provide investigators with relevant information concerning unique or uncommon investigations that might be encountered. Pursuant to Administrative Regulation 340, all complaints regarding allegations of employee misconduct are sent to the OIG for review, category classification, assignment to the appropriate investigative body, and tracking. Complaints assigned to a Division Head are the responsibility of the Division Head for the completion of the formal investigation. All complaints must be investigated and documented. All reports are forwarded to the OIG for review and storage.

It is acknowledged that some of the following information may not always be relevant, it is provided as information and to augment an investigator's awareness and knowledge of proper investigative techniques.

## **Confidentiality**

All information obtained during any investigation and all documentation concerning the investigation is confidential. Any Department employee or representative who is tasked with taking, investigating and adjudicating complaint allegations, shall hold the matter confidential. Discussion and/or release of any information shall be restricted to individuals with **A NEED TO KNOW** *AND* **A RIGHT TO KNOW**. Investigators should seek direction from supervisors before releasing any information.

Assigned investigators should direct and admonish all employee-involved parties, to refrain from discussing complaint allegations with any non-authorized person or entity. All non-employee involved parties will be requested and advised to refrain from discussing matters with non-authorized parties.

The Investigative Case file and all of its attachments are *not* public records and will not be reproduced for the public record. Access to the file is limited to the case investigator and his or her supervisor, designated Department officials, the IG or designee, concerned Deputy Directors, the Director, and when applicable representatives of the state's Attorney General's office. The subject of the investigation and his or her representative may review and/or copy the file according to requirements found in NRS 289.

NRS 289.040 Law enforcement agency prohibited from placing unfavorable comment or document in administrative file of peace officer; exception; right to respond; provision of copy of comment or document; right to review administrative file under certain circumstances.

5. Upon request, a peace officer may review any administrative file of that peace officer maintained by the law enforcement agency that does not relate to a current investigation.

The Investigative Case file and all of its attachments are the property of the OIG. That file *may not* be reproduced or copied without the express written consent of the IG. The material must not be left unattended and when not in use, must be retained in a secure manner. Authorized

individuals who review or take possession of the file are required to sign before taking custody of it.

Any evidence obtained solely as a result of the personnel investigation is confidential and shall **NOT** be disclosed to members of the outside agency conducting a criminal investigation or any other unauthorized persons.

## The Need for Documentation

It is important to the employee and the Department to maintain a file and document complaints even following disposition. Complaints that were investigated and resolved but not documented have resulted in additional and redundant investigation simply because documentation was not prepared. The public and employees have a right to feel secure that complaint allegations are handled appropriately within the Department. Public and employee trust and confidence in the Department diminish when records don't exist and the process lacks standardization. Standardizing the process ensures all complaints are handled equitably and fairly. Employees should be informed that investigative findings and reports are confidential.

## **Parallel Administrative and Criminal Investigations**

Garity and Miranda Rights

When it becomes necessary to conduct both an administrative investigation and a criminal investigation regarding a complaint, the OIG will most often handle the Administrative investigation. Where possible and/or appropriate, and depending upon the nature of the alleged criminal conduct, the criminal matter will be referred to the Attorney General's Office or other law enforcement agency. If circumstances arise requiring the OIG to handle both investigations, separate and independent investigative persons will be assigned. Each will develop and maintain separate Investigative Case files; whereby, privileged information gathered in the administrative investigation will not, <u>under any circumstances</u>, be shared with the individual(s) assigned the investigation of the criminal matter. If a criminal investigation is on going, all criminal reports will be gathered and added to the administrative investigation. Absolutely none of the administrative file will be copied or shared for the criminal investigative report. Any questions concerning this issue will be forwarded to the Attorney General's Office.

## **Self Incrimination**

In conducting a criminal investigation, it is the Department's practice to provide a Miranda admonishment to all individuals suspected of criminal activity and to specifically identify the accused/suspected staff member that the interview being conducted is in regards to a criminal investigation.

## False and Misleading Statements - Untruthfulness or an intentional lack of candor.

- A <u>false statement</u> is any manner of communication including but not limited to oral, written and electronic made by a Department employee:
  - ➤ When the employee knew or evidence demonstrates the employee should have known the statement was false at the time it was made; or
  - ➤ The employee fails to correct any statement upon learning the statement is false.
- A <u>misleading statement</u> is any manner of communication including but not limited to oral, written and electronic made by a Department employee:
  - ➤ When the employee knew or evidence demonstrates employee should have known the statement was inaccurate,
  - > Intentionally provides information in an inaccurate context.
  - > Intentionally provides information designed to misdirect or lead others astray.
  - ➤ Intentionally withholds information that is known or reasonably believed to be relevant.
  - ➤ Intentionally fails to provide a complete and accurate account of matters that are known by the employee.

## **Exculpatory Information**

Information that tends to prove the innocence of an accused is called *exculpatory* information. Information that tends to prove the accused guilty is called *inculpatory* information. Investigators are obligated to disclose all relevant information developed during any investigation, whether it tends to prove or disprove the employee's involvement. Indeed, relevant information which neither suggests guilt or innocence should also be included. Consider the following:

An examination for latent prints failed to identify the accused employee.

In this example, the investigator should indicate on the Chronological Record that the latent print examination was conducted with an explanation of the results. Similarly, the information should be noted as an Investigator's Note in the investigation.

While the absence of latent prints neither proves nor disproves that the employee handled the object, it is nonetheless proper that the analysis and its results were included in the investigation. From the defense's perspective, the results of the analysis may corroborate a defense theory. The omission of the analysis from the investigation could be used to show a willful attempt by the investigator to conceal exculpatory information. Such omissions appear biased and can cast a shadow of doubt on an otherwise proper investigation, calling into question its overall objectivity and thoroughness.

## **Legal Advice**

Often, the investigator will be asked to provide legal advice and recommendations as to what an employee should do regarding representation, etc. It is the Department's position that investigators refrain from providing legal advice to anyone. Investigators are required to advise

each employee being investigated of their right to representation. However, investigators must refrain from directing an employee to any specific representative. They may direct such inquiries to the Department's Personnel Office who has available information pertaining to organized labor organizations that may be available to assist employees.

## **Privileged Communications**

Are best described as being communications (spoken or unspoken) that are between an employee and his or her representative/attorney. These communications are privileged, in that the investigator does not have a right to know any of the specifics regarding the communications. Similarly, communications between an investigator and his or her counsel are privileged.

## **Polygraph Examinations**

#### NRS 289.070 Use of polygraphic examination in investigation.

- 1. During an investigation conducted pursuant to <u>NRS 289.057</u>, the peace officer against whom the allegation is made may, but is not required to, submit to a polygraphic examination concerning such activities.
- 2. A person who makes an allegation against a peace officer pursuant to NRS 289.057 may not be required to submit to a polygraphic examination as a condition to the investigation of his allegation, but may request or agree to be given a polygraphic examination. If such a person requests or agrees to be given a polygraphic examination, such an examination must be given.
- 3. If a polygraphic examination is given to a peace officer pursuant to this section, a sound or video recording must be made of the polygraphic examination, the preliminary interview and the postexamination interview. Before the opinion of the polygraphic examiner regarding the peace officer's veracity may be considered in a disciplinary action, all records, documents and recordings resulting from the polygraphic examination must be made available for review by one or more polygraphic examiners licensed or qualified to be licensed in this State who are acceptable to the law enforcement agency and to the officer. If the opinion of a reviewing polygraphic examiner does not agree with the initial polygraphic examiner's opinion, the peace officer must be allowed to be reexamined by a polygraphic examiner of his choice who is licensed or qualified to be licensed in this State.
- 4. The opinion of a polygraphic examiner regarding the peace officer's veracity may not be considered in a disciplinary action unless the polygraphic examination was conducted in a manner which complies with the provisions of <u>chapter 648</u> of NRS. In any event, the law enforcement agency shall not use a polygraphic examiner's opinion regarding the veracity of the peace officer as the sole basis for disciplinary action against the peace officer.

The use of polygraph examinations is greatly limited due to legislation, case law and inadmissibility in court and/or administrative hearings. However, a complainant's polygraph examination may be used at a hearing as long as the complainant agrees.

A peace officer against whom an allegation of misconduct is made *may*, but is not required to, submit to a polygraph examination concerning such activities. A person who makes an allegation against a peace officer *may not be required* to submit to a polygraph examination as a condition to the investigation of the allegation, but *may request or agree* to be given a polygraph examination. If such a person requests or agrees to be given a polygraph examination, such an examination *must* be given. If a polygraph examination is given to a peace officer, a sound or video recording of the preliminary interview, the polygraph examination, and the post examination interview must be made. A polygraph examiners

opinion as to the veracity of the accused peace officer shall not be used as the sole basis for disciplinary action. (See NRS 289.070)

(Note: NRS 289.070 contains limitations concerning the polygraph. Before the opinion of the polygraph examiner regarding the officer's veracity may be considered in a disciplinary action, all records, documents, and recordings resulting from the polygraph examination must be made available for review by one or more polygraph examiners licensed or qualified to be licensed in this state who are acceptable to the law enforcement agency and the officer. If the opinion of a reviewing polygraph examiner does not agree with the initial polygraph examiner's opinion, the officer must be allowed to be reexamined by a polygraph examiner of his choice who is licensed or qualified to be licensed in this state. The opinion of a polygraph examiner regarding the officer's veracity may not be considered in a disciplinary action unless the polygraph examination was conducted in a manner which complies with the provisions of NRS 648.)

When a subject's credibility is highly suspect, the polygraph examination can be useful as an investigative tool. Often, subjects may admit untruthfulness during the examination or after the examination when confronted with results. When appropriate, arrange for polygraph examinations in compliance with NRS 289.070 and document in chronological log.

If, during the polygraph examination or subsequent re-interview, the subject recants or contradicts any previous statement or admits to lying, the polygraph examination may be referenced in the investigation. The reference should begin like this:

Complainant Jones was re-interviewed after voluntarily submitting to a polygraph examination. Jones recanted his statement and admitted to giving false information about Officer Marbury's discourteous remark ...

## **Probationary Employees**

Probationary employees constitute a special class in regards to the administration of discipline. Because of this, it is important to determine and note in the Investigative Case file, an employee's status. This will assist the Division Head in reviewing and adjudicating the matter. Include the employee's probationary start and end date in the Investigator's Note section.

## **Searches of Employees**

It is the policy of the Department that searches of its institutions/facilities and inmates, employees and visitors are an essential element in the maintenance of safety and security. Division Heads are responsible to formulate and implement institutional procedures consistent with law and guidelines governing searches of institutions/facilities, inmates, employees and visitors under their jurisdiction.

All employees of the Nevada Department of Corrections shall be advised that their person, vehicle, and articles of property in their possession are subject to inspection to whatever degree

is consistent with Department policy and the institution/ facility security needs. An employee who declines to submit to a requested search will be subject to disciplinary action.

Each Institution/Facility posts warning signs advising that entrance onto the property of the prison constitutes consent to be searched including vehicles and articles of property in possession, to a degree consistent with security needs. Policy prescribes that searches may include person, property or vehicle. Employee searches will be made pursuant to consent; or after a warrant has been obtained; or where there is probable cause to believe a crime has been or is being committed, that evidence will be found and there are exigent circumstances without consent. Exigent circumstances exist when there is probable cause to believe that the contraband and/or unauthorized weapon will be destroyed if the search is not immediately undertaken and under the circumstances there is no time to obtain a search warrant.

The degree and intensity of the search will be the least required to bring the search to a conclusion. As the search progresses, with each new piece of evidence to support the presence of contraband, the employee will be given ample opportunity to remove and surrender the contraband. Each degree of the search must be thoroughly evaluated in order to determine reasonable cause to proceed with a more intrusive method of search.

Clothed body searches and metal detector inspections may be conducted in a routine manner for preventative as well as evidence gathering measures. Authorization is derived from administrative or supervisorial orders or directives. Unclothed body searches will only be conducted pursuant to the employee consent or after a search warrant has been obtained in extraordinary circumstances or where there is probable cause and exigent circumstances exist. Body cavity searches of employees will only be conducted pursuant to search warrant specifically authorizing such a search. Correctional staff, other than qualified medical staff, will not conduct unclothed body searches or inspections of employees of the opposite sex.

No holds or restraints may be applied in any manner, which may inhibit breathing or swallowing. An employee may be physically controlled and isolated from other persons if he or she has been arrested and is awaiting transport. Under these circumstances, the employee will remain under constant supervision. All employee searches, other than the clothed body search or metal detector inspection, and each progressive step must be under the general supervision of supervisory staff not less than the level of sergeant.

(Note: Department policy requires that a detailed report concerning any extraordinary search of an employee be submitted to the concerned warden by the highest ranking custody officer present no later than the first working day following the search. The report should include chronology of events leading to the search, name and rank of all persons participating in the search or supplying information justifying the search, all evidence and justification for each degree of search, results of the search,)

Incidental to arrest – Department employees that are arrested by an authorized peace officer will be searched in accordance with the same procedures followed in any other arrest. No supervisory approval is necessary prior to a search incidental to an arrest: however, an

employee's arrest will necessitate special notification and actions that are required by administrative regulation.

Whenever practicable, searches should be conducted out of view of other employees and the public.

NOTE: If the search includes an interrogation of the employee, all requisite admonishments will be provided. If no interrogation is conducted, the search is a "contact" rather than an "interview" or "interrogation."

## **Searches of Department-owned Storage Spaces**

The courts have upheld a public agency's ability to conduct administrative searches of agency-owned storage spaces, such as lockers and desks. Contact the OIG for direction.

Search Warrants – It is a good practice to get a search warrant whenever there is probable cause and *prima facie* criminal activity. It is often difficult to support a search on the pretext of a criminal investigation when no search warrant is sought. You don't want to lose evidence due to a subsequent ruling that it was obtained illegally. Again, even with a search warrant, ask for consent first, but don't ask for consent while waving the search warrant in the employee's face. Consent obtained under those circumstances is not consent at all.

NOTE: You will only be able to get a search warrant when you have criminal activity alleged. Judges do not sign search warrants for allegations that amount only to administrative misconduct.

## **Employees Arrested or Suspected of Criminal Acts**

When an employee is detained or arrested and without option, transported to a local jail, police or medical facility for outstanding warrants or any offense committed, Investigators assigned to the OIG may be tasked to respond to the outside agency for the purpose of conducting a preliminary investigation but at a minimum and when available, collect the arresting initiation report. The preliminary investigation should be conducted pursuant to that which is outlined in Section II of this guide and include the following:

- Advise the concerned member of the outside agency that your investigation is for internal, administrative purposes only
- Ensure that appropriate sobriety or other tests required for the administrative investigation are administered pursuant to policy and legislative guidelines. DO NOT re-administer a test if the outside agency has already done so. Their test shall be used for the administrative investigation
- Complete the Department's Standardized Complaint form or NOTIS entry if one was not completed at the time the Department became aware of the incident.

## **Substance Abuse Related Investigations**

Department employees are not immune from the pervasiveness of drug and alcohol abuse. Yet, the public's trust demands that Department employees be above reproach, especially with regard to drugs and alcohol. The implication of criminal misconduct and the potential for corruption and security lapses make substance abuse investigations highly important, sensitive and complex. An employee who consumes or is under the influence of alcohol or who possesses, consumes or is under the influence of a controlled substance is subject to disciplinary action.

(NOTE: Substance abuse investigations are conducted pursuant to Department policy and relevant State Administrative Codes.)

**Subsequent Investigation -** In the event of a positive result for a drug or alcohol screening test, the matter may be referred to the OIG for formal misconduct investigation. Following review, the investigation referral will be classified and assigned to the appropriate investigative body.

## **SECTION X: FORMING ALLEGATIONS**

The following guidelines may be used to assist complaint investigators in the formation of proper allegations. Properly formed allegations help to focus the investigation. The wording of allegations also plays a role in the Department's ability to definitively resolve misconduct. Allegations should be formulated using specific Class of Offense Guideline primary misconduct headings and secondary specific descriptor language. Consider the following:

An inmate told the complaint investigator that on June 1, 2003, officer Smith called him a "jerk".

Referencing the Class of Offense Guideline, this alleged activity is found under the specific primary heading of "Unbecoming Conduct" and the adjudicator and if applicable Attorney General's Office would review all secondary specific descriptors for application to the adjudication for the specific class of violation. Using that information and inserting the specifics of this allegation, a properly formatted allegation in this instance would be, at the time of adjudication:

#### **ALLEGATION 1**

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNBECOMING CONDUCT when Smith called Doe a jerk.

When the inmate's complaint involves more than a single act such as the following::

An inmate told the complaint investigator that on June 1, 2003, officer Smith called him a "jerk", as the officer grabbed him by the hair, threw him to the ground, and kicked him for no reason.

#### Sample complaint

If the complainant's statement were formed into a single allegation, it would present a problem for the Investigator and later, the Adjudicator (employee's Division Head), as well as the Deputy Attorney General representing the Department at any subsequent administrative hearing. Should some acts be found to be true but any single act (name calling, grabbing by the hair, throwing to the ground, kicking) within the allegation be proved false, it becomes problematic to sustain the allegation as a whole. To avoid this problem, each act of misconduct should be addressed separately at the initial phase by the investigator with the actual secondary headings applied by the adjudicator or the Attorney General's Office during their review. However, the complainant's statement above would thus be written into four separate allegations:

## **ALLEGATION 1.**

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNBECOMING CONDUCT when Smith called Doe a jerk.

## **ALLEGATION 2.**

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNAUTHORIZED USE OF FORCE when Smith unnecessarily grabbed Doe by the hair.

#### **ALLEGATION 3.**

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNAUTHORIZED USE OF FORCE when Smith unnecessarily threw Doe to the ground.

### **ALLEGATION 4.**

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNAUTHORIZED USE OF FORCE when Smith unnecessarily kicked Doe's right thigh.

## Sample allegations

Similarly, if two employees are accused of the same acts of misconduct in the same incident, the IG's office will initiate a single investigation IA separated by sequential investigative files for each involved employee. Investigators from the OIG are available for advice and assistance in structuring allegations. The telephone number is (775) 887-3247.

The following are provided to assist in the formation of allegations of misconduct. This is not intended to be all-inclusive, but rather to provide examples of categories of potential misconduct. Keep allegations simple, specific, and precise.

#### Allegation Examples

All allegations begin with one of the following formats:

- Complainant (*last name*) alleged that on (*date*), (*employee's name*).....
- The Department alleges that on (date), (employee's name) ....
- Inmate (last name #) alleged that on (<u>date</u>), (<u>employee's name</u>).....

The next part of the allegation would read

• Engaged in ....

At this point and for investigative use only, use the primary heading from the AR 339 Class of Offense Guideline that most accurately reflects the alleged misconduct.

Finally, you would write

• When he or she....

And end the allegation with the specific alleged activity.

# SECTION XI: ADMINISTRATIVE REGULATION 339, CLASS OF OFFENSE GUIDELINES

Administrative Regulations change and any confidential manuals associated with the Administrative Regulation can change even more frequently. It is a best practice for an investigator to maintain knowledge of changes. Additionally, the allegation(s) should be reflective of the Administrative Regulation that was in place at the time of the complaint, not at the time of the interview or report.

# SECTION XII: ADMINISTRATIVE REGULATION 340, EMPLOYEE COMPLAINT REPORTING AND INVESTIGATION

Administrative Regulations change and any confidential manuals associated with the Administrative Regulation can change even more frequently. It is a best practice for an investigator to maintain knowledge of changes. Additionally, the allegation(s) should be reflective of the Administrative Regulation that was in place at the time of the complaint, not at the time of the interview or report.

## **APPENDICES**

## APPENDIX I – NEVADA REVISED STATUTES

#### CHAPTER 209 ADMINISTRATION OF DEPARTMENT

#### NRS 209.132 Director of Department: Authority to delegate powers, duties or functions.

- 1. The Director may delegate to a deputy director, manager, warden or employee of the Department the exercise or discharge in the name of the Director of any power, duty or function vested in or imposed upon the Director.
- 2. The official act of any such person acting in the name of the Director and by his authority shall be deemed an official act of the Director.

# CHAPTER 289 PEACE OFFICERS GENERAL PROVISIONS

#### PERSONS POSSESSING POWERS OF PEACE OFFICERS

NRS 289.220 Director, officers and designated employees of Department of Corrections; certain employees of detention facilities of metropolitan police department.

NRS 289.220 Director, officers and designated employees of department of corrections; certain employees of detention facilities of metropolitan police department.

- 1. The director of the department of corrections, and any officer or employee of the department so designated by the director, have the powers of a peace officer when performing duties prescribed by the director. For the purposes of this subsection, the duties which may be prescribed by the director include, but are not limited to, pursuit and return of escaped offenders, transportation and escort of offenders and the general exercise of control over offenders within or outside the confines of the institutions and facilities of the department.
- 2. A person appointed pursuant to <u>NRS 211.115</u> to administer detention facilities or a jail, and his subordinate jailers, corrections officers and other employees whose duties involve law enforcement have the powers of a peace officer.

#### **CERTIFICATION**

NRS 289.480 "Category III peace officer" defined. "Category III peace officer" means a peace officer whose authority is limited to correctional services, including the superintendents and correctional officers of the department of corrections.

Add Category II peace officer

#### RIGHTS OF PEACE OFFICERS

| NRS 289.020 | Punitive action: Prohibited for exercise of rights under internal procedure; opportunity for hearing; refusal to cooperate in criminal investigation punishable as insubordination.   |
|-------------|---|
| NRS 289.025 | Confidentiality of home address and photograph of peace officer in possession of law enforcement agency; exceptions.  |
| NRS 289.027 | Law enforcement agency required to adopt policies and procedures concerning service of certain subpoenas on peace officers.   |
| NRS 289.030 | Law enforcement agency prohibited from requiring peace officer to disclose financial information; exception.  |
| NRS 289.040 | Law enforcement agency prohibited from placing unfavorable comment or document in administrative file of peace officer; exception; right to respond; provision of copy of comment or document; right to review administrative file under certain circumstances. |
| NRS 289.050 | Consequences of refusal to submit to polygraphic examination.   |

Revised September 2013

| NRS 289.055  | Establishment and availability of written procedures for investigating complaints and allegations of misconduct. |
|--------------|--|
| NIDC 200 055 |  |
| NRS 289.057  | Investigation of allegation of misconduct; suspension without pay; review of file by peace officer in            |
|              | certain circumstances; law enforcement agency prohibited from keeping or making record                           |
|              | of investigation or punitive action in certain circumstances.  |
| NRS 289.060  | Notification and requirements for interrogation or hearing relating to investigation.                            |
| NRS 289.070  | Use of polygraphic examination in investigation.   |
| NRS 289.080  | Right to presence and assistance of representatives at interrogation or hearing relating to                      |
|              | investigation; confidential information; disclosure; record of interrogation or hearing; right                   |
|              | to review and copy investigation file upon appeal.   |
| NRS 289.085  | Inadmissibility of evidence obtained unlawfully during investigation.  |
| NRS 289.090  | Investigation concerning alleged criminal activities.  |
| NRS 289.100  | Limitations on application of chapter.   |
| NRS 289.110  | Report concerning improper governmental action; investigation of report; reprisal by employer                    |
|              | prohibited.  |
| NRS 289.120  | Judicial relief available for aggrieved peace officer.   |

# CHAPTER 284 STATE PERSONNEL SYSTEM RETENTION IN AND SEPARATIONS FROM SERVICE CHAPTER 284

NRS 284.383 Use of disciplinary measures; employee entitled to receive copy of findings or recommendations; classified employee entitled to receive copy of policy explaining information relating to disciplinary action.

- 1. The Commission shall adopt by regulation a system for administering disciplinary measures against a state employee in which, except in cases of serious violations of law or regulations, less severe measures are applied at first, after which more severe measures are applied only if less severe measures have failed to correct the employee's deficiencies.
- 2. The system adopted pursuant to subsection 1 must provide that a state employee is entitled to receive a copy of any findings or recommendations made by an appointing authority or the representative of the appointing authority, if any, regarding proposed disciplinary action.
- 3. An appointing authority shall provide each permanent classified employee of the appointing authority with a copy of a policy approved by the Commission that explains prohibited acts, possible violations and penalties and a fair and equitable process for taking disciplinary action against such an employee. (Added to NRS by 1979, 1353; A 1995, 233; 2011, 1495)

#### NRS 284.385 Dismissals, demotions and suspensions.

- 1. An appointing authority may:
  - a. Dismiss or demote any permanent classified employee when the appointing authority considers that the good of the public service will be served thereby.
  - b. Except as otherwise provided in NRS 284.148, suspend without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days.
- 2. Before a permanent classified employee is dismissed, involuntarily demoted or suspended, the appointing authority must consult with the Attorney General or, if the employee is employed by the Nevada System of Higher Education, the appointing authority's general counsel, regarding the proposed discipline. After such consultation, the appointing authority may take such lawful action regarding the proposed discipline as it deems necessary under the circumstances.
- 3. A dismissal, involuntary demotion or suspension does not become effective until the employee is notified in writing of the dismissal, involuntary demotion or suspension and the reasons therefor. The notice may be delivered personally to the employee or mailed to the employee at the employee's last known address by registered or certified mail, return receipt requested. If the notice is mailed, the effective date of the dismissal, involuntary demotion or suspension shall be deemed to be the date of delivery or if the letter is returned to the sender, 3 days after mailing.
- 4. No employee in the classified service may be dismissed for religious or racial reasons. [49:351:1953]—(NRS A 1963, 1049; 1977, 991; 1993, 2092; 2011, 1495)

NRS 284.387 Internal administrative investigations leading to certain disciplinary action: Right of employee to written notice of allegations before questioning and to representation; deadline for and notification to employee of completion; extensions.

- 1. An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee pursuant to NRS 284.385 must be:
  - a. Provided notice in writing of the allegations against the employee before the employee is questioned regarding the allegations; and
  - b. Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. The employee must be given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.
- 2. An internal administrative investigation that could lead to disciplinary action against an employee pursuant to NRS 284.385 and any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1. If the appointing authority cannot complete the investigation and make a determination within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1, the appointing authority may request an extension of not more than 60 days from the Administrator upon showing good cause for the delay. No further extension may be granted unless approved by the Governor. (Added to NRS by 2003, 2003; A 2011, 1496)

#### AB 179, 76th Legislative session changed the NRS 284 to the following:

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** (Deleted by amendment.)

**Sec. 1.5.** NRS 284.383 is hereby amended to read as follows:

- 284.383 1. The Commission shall adopt by regulation a system for administering disciplinary measures against a state employee in which, except in cases of serious violations of law or regulations, less severe measures are applied at first, after which more severe measures are applied only if less severe measures have failed to correct the employee's deficiencies.
- 2. The system adopted pursuant to subsection 1 must provide that a state employee is entitled to receive a copy of any findings or recommendations made by an appointing authority or the representative of the appointing authority, if any, regarding proposed disciplinary action.
- 3. An appointing authority shall provide each permanent classified employee of the appointing authority with a copy of a policy approved by the Commission that explains prohibited acts, possible violations and penalties and a fair and equitable process for taking disciplinary action against such an employee.

Sec. 2. NRS 284.385 is hereby amended to read as follows:

284.385 1. An appointing authority may:

- (a) Dismiss or demote any permanent classified employee when the appointing authority considers that the good of the public service will be served thereby.
- (b) Except as otherwise provided in NRS 284.148, suspend without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days.
- 2. Before a permanent classified employee is dismissed, involuntarily demoted or suspended, the appointing authority must consult with the Attorney General or, if the employee is employed by the Nevada System of Higher Education, the appointing authority's general counsel, regarding the proposed discipline. After such consultation, the appointing authority may take such lawful action regarding the proposed discipline as it deems necessary under the circumstances.
- 3. A dismissal, involuntary demotion or suspension does not become effective until the employee is notified in writing of the dismissal, involuntary demotion or suspension and the reasons therefor. The notice may be delivered personally to the employee or mailed to the employee at the employee's last known address by registered or certified mail, return receipt requested. If the notice is mailed, the

effective date of the dismissal, involuntary demotion or suspension shall be deemed to be the date of delivery or if the letter is returned to the sender, 3 days after mailing.

[3.] 4. No employee in the classified service may be dismissed for religious or racial reasons.

**Sec. 3.** NRS 284.387 is hereby amended to read as follows:

284.387 *1.* An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee pursuant to NRS 284.385 must be:

- [1.] (a) Provided notice in writing of the allegations against the employee before the employee is questioned regarding the allegations; and [2.] (b) Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. The employee must be given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.
- 2. An internal administrative investigation that could lead to disciplinary action against an employee pursuant to NRS 284.385 and any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1. If the appointing authority cannot complete the investigation and make a determination within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1, the appointing authority may request an extension of not more than 60 days from the Director upon showing good cause for the delay. No further extension may be granted unless approved by the Governor.

**Sec. 4.** This act becomes effective on July 1, 2011.

## Appendix II – NEVADA ADMINISTRATIVE CODE

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383) Appropriate disciplinary or corrective action may be taken for any of the following causes:

- 1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of <u>NAC 284.653</u> or <u>284.738</u> to <u>284.771</u>, inclusive.
  - 2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
- 3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
  - 4. Discourteous treatment of the public or fellow employees while on duty.
  - 5. Incompetence or inefficiency.
  - 6. Insubordination or willful disobedience.
  - 7. Inexcusable neglect of duty.
  - 8. Fraud in securing appointment.
  - 9. Prohibited political activity.
  - 10. Dishonesty.
- 11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
  - 12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
  - 13. Conviction of any criminal act involving moral turpitude.
- 14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.
  - 15. Unauthorized absence from duty or abuse of leave privileges.
  - 16. Violation of any rule of the Commission.
  - 17. Falsification of any records.
  - 18. Misrepresentation of official capacity or authority.
  - 19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
- 20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his appointing authority. 21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
- 22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.
  - 23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.

# NAC 284.653 Driving under the influence; unlawful acts involving controlled substance. (NRS 284.065, 284.155, 284.383, 284.385, 284.407)

- 1. An employee is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of any of the following offenses:
- (a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:
  - (1) Driving under the influence in violation of NRS 484.379; or
  - (2) Any offense resulting from an incident in which the employee was:
    - (I) Originally charged with driving under the influence; or
    - (II) Charged with any other offense for which driving under the influence is an element of the offense.
- (b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the premises of the workplace or on state business.
- 2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:
  - (a) For the first offense:
    - (1) Dismissal;
    - (2) Demotion, if permitted by the organizational structure of the agency for which he is employed;

- (3) Suspension for 30 calendar days; or
- (4) Suspension for 30 calendar days and demotion.
- (b) For the second offense within 5 years, dismissal.
- 3. An employee who is suspended or demoted pursuant to subsection 2 must:
- (a) Agree to be evaluated through the Employee Assistance Program; and
- (b) Complete any program of treatment recommended by the evaluation.
- 4. If an employee fails to complete the program of treatment, the appointing authority must dismiss the employee.
- 5. Pursuant to <u>NRS 193.105</u>, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.
- 6. An employee must report a conviction of any offense described in this section to his appointing authority within 5 working days after it occurs. If he fails to make that report, he must be dismissed.

#### USE OF ALCOHOL OR DRUGS

**NAC 284.880 Definitions.** (NRS 284.065, 284.155, 284.407) As used in NAC 284.880 to 284.894, inclusive, unless the context otherwise requires:

- 1. "Employee" has the meaning ascribed to it in subsection 1 of NRS 284.4061.
- 2. "Screening test" has the meaning ascribed to it in subsection 2 of NRS 284.4061. (Added to NAC by Dep't of Personnel, eff. 12-26-91; A by Personnel Comm'n by R066-09, 10-27-2009)

NAC **284.882** Administration of screening tests. (NRS 284.065, 284.155, 284.4065, 284.407) A screening test to detect the general presence of:

- 1. A controlled substance must comply with:
- a. The standards established by the United States Department of Health and Human Services which are hereby adopted by reference. A copy of the standards is available, without charge, from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace Programs, 1 Choke Cherry Road, Rockville, Maryland 20857; and
  - b. Any supplementary standards and procedures established by the Commission.
- 2. Alcohol by testing a person's breath must be conducted using a breath-testing device certified in accordance with the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation. (Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000; A by Personnel Comm'n by R066-09, 10-27-2009; R009-11, 10-26-2011)

# NAC 284.884 Maximum allowable concentrations of alcohol in blood or breath of employee; confirmation of positive result on screening test of breath. (NRS 284.065, 284.155, 284.407)

- 1. An employee must not have a concentration of alcohol in his blood or breath greater than .01 gram by weight of alcohol per 100 milliliters of his blood or per 210 liters of his breath while on duty. Disciplinary action may be taken by the appointing authority in accordance with the provisions of NAC 284.638 to 284.656, inclusive, if a screening test indicates that the concentration of alcohol in the blood or breath of the employee is greater than .01 gram by weight of alcohol per 100 milliliters of his blood or per 210 liters of his breath while on duty.
- 2. A positive result on a screening test of a person's breath must be confirmed by a second screening test. The second screening test must be conducted immediately after receipt of the positive result of the first screening test.

# NAC 284.886 Screening test for controlled substance required of applicant for position affecting public safety; exception. (NRS 284.065, 284.155, 284.407)

1. Except as otherwise provided in this section, an applicant for a position that is designated by the Personnel Commission as affecting public safety must submit to a screening test to detect the general presence of a controlled substance unless he is employed by the State in a position that is also designated as affecting public safety at the time he applies.

2. A person who has been laid off from a position affecting public safety and who is reemployed in a class affecting public safety within 1 year after the date he was laid off is not required to submit to a screening test pursuant to this section.

# NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)

- 1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his or her duties safely and efficiently include, but are not limited to:
  - a. Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;
  - b. The odor of alcohol or a controlled substance on the breath of the employee;
  - c. Observation of the employee consuming alcohol;
  - d. Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source; or
  - e. The occurrence of any accident while the employee is on the premises of the workplace for which the employee receives medical treatment.
- 2. Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Division of Human Resource Management.
- 3. The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to paragraph (b) of subsection 2 of <u>NRS 284.4065</u>. As used in subsection 2 of <u>NRS 284.4065</u>, "substantial damage to property" includes, but is not limited to:
  - a. The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or
  - b. The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A by Personnel Comm'n by R066-09, 10-27-2009; R193-09, 4-20-2010; R010-11, 10-26-2011)

NAC 284.890 Transportation of employee to and from location of screening test. (NRS 284.065, 284.155, 284.407) If an employee is required to submit to a screening test, the appointing authority shall provide transportation for the employee to the location of the test. After the employee submits to the screening test, the appointing authority shall provide transportation for the employee to his home.

# NAC 284.892 Duties of employee who is referred to employee assistance program. (NRS 284.065, 284.155, 284.407)

- 1. If an employee is referred to an employee assistance program as a result of a positive result on a screening test or pursuant to NAC 284.653, he shall provide to the appointing authority:
  - (a) Evidence of his consultation with a counselor employed by an employee assistance program; and
  - (b) Any recommendation of the counselor with respect to his rehabilitation,
- → within 5 working days after the date of the initial consultation.
- 2. The employee shall provide to the appointing authority on a monthly basis all recommendations of the counselor with respect to his rehabilitation.
- 3. The employee shall provide to the appointing authority evidence of his completion of any rehabilitation program recommended by the counselor within 5 working days after his completion of the program.
- 4. An employee who fails to provide evidence of his consultation with a counselor or successful completion of a rehabilitation program is subject to disciplinary action.

# NAC 284.894 Treatment of applicant who tests positive; treatment of employee who tests positive twice within 5-year period. (NRS 284.065, 284.155, 284.407)

- 1. An applicant who tests positive for the use of a controlled substance must not be considered by an appointing authority for employment in any position which requires such testing and must be removed from all lists of eligible persons established from a recruitment that requires such testing until:
  - a. One year after the time of the positive test; or

- b. The applicant provides evidence that he or she has successfully completed a rehabilitation program for substance abuse.
- 2. An employee who tests positive for the use of a controlled substance or alcohol for the second time within a 5-year period is subject to disciplinary action by the appointing authority and may be terminated at the discretion of the appointing authority.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 7-1-94; A by Personnel Comm'n by R194-09, 4-20-2010)

## APPENDIII – VI CASE LAW

#### INTERNAL INVESIGATIONS

Garrity v. New Jersey, 385 U.S. 493 (1967) (holding that the Fifth Amendment as applied to the states via the Fourteenth Amendment which protects employees against coerced statements prohibits use in subsequent criminal proceedings of statements obtained by employers under threat of dismissal): Chief Garrity of the New Jersey Police Department questioned officers regarding ticket fixing under the threat that if they failed to answer they would be subject to dismissal. Chief Garrity then allowed the statements to be used in subsequent criminal proceedings for conspiracy to obstruct the administration of the traffic laws.

*Gardner v. Broderick*, 392 U.S. 273 (1968) While criminally incriminating answers may be administratively compelled, questions must be specifically, narrowly and directly related to scope of the investigation. (No fishing expeditions.)

*In Re Grand Jury Subpoena, Huntington Beach P.D.* (9<sup>th</sup> Cir. 1996)75 F.3d 446 U.S. DOJ may access coerced statements if adequate 5<sup>th</sup> amendment safeguards are in place.

*U.S. v. North (D.C. Cir. 1990) 920 F.2d 940* Prosecutor or Grand Jury may not use in any manner (access) immunized (coerced) statements for **any** reason.

#### **EMPLOYEE REPRESENTATIVES**

NLRB v. Texaco (9<sup>th</sup> Cir. 1981) 659 F.2d 124 Employee representative may not be relegated to role as a passive observer and must be permitted to speak during interview.

*NLRB v. Weingarten, Inc.* (1975) 95 S.Ct. 959, 420 U.S. 251 Right to request meaningful representation arises when employee reasonably believes that the interview will result in disciplinary action.

#### PROBATIONARY EMPLOYEES

**Dorr v. County of Butte** (9<sup>th</sup> Cir. 1986) 795 F.2d 875 If Department labels termination of probationary employees as "unsatisfactory performance" it is immaterial that disciplinary grounds may also exist and procedural safeguards do not create a property interest for at will employees.

Fleischer v. Signal Hill (9<sup>th</sup> Cir. 1987) 829 F 2d 149 No liberty interest where employee admits misconduct and is terminated for failure to meet standards. (No privacy interest in pre-employment criminal sex acts.)

#### **ARRESTS & SEARCHES**

Terry v. Ohio, 392 U.S. 1 (1968) (concluding that Officer McFadden had reasonable grounds to believe that Terry was armed and dangerous at the time Terry was seized and searched for weapons, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized). A 39 year veteran of the Cleveland Police Department observed suspicious activity of three men who appeared to be casing stores in the downtown area with the intent to commit robbery. The officer stopped the three individuals and conducted a pat down search for weapons. The officer found revolvers on two of the suspects and arrested them for carrying concealed weapons. A stop and frisk is within the purview of the Fourth Amendment. "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." A pat down is a search. The Court recognized that while a warrant based on probable cause is required except in exigent circumstances, it also acknowledged the needs of police to swiftly respond to on-the-spot observations on the beat. However, an "officer must be able to point to specific articulable facts which, taken

together with rational inferences from those facts, reasonably warrant that intrusion." An objective standard is applied by the court to determine whether the facts available to the officer at the moment of the search and seizure "warrant a man of reasonable caution in the belief" that the action taken was appropriate?" Simple good faith on the part of the officer is not enough. Officer McFadden had a reasonable suspicion to stop Terry and his companions to investigate whether they may be intending to commit a robbery. The officer's sole justification for the search, however, was the need to protect the officer and others nearby. Therefore, the search had to be limited to a search for weapons.

The Court held: "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him."

Minnesota v. Dickerson, 508 U.S. 366 (1993) (holding that a pat down search for weapons does not permit an officer to remove an object from a suspect's pocket whose character as contraband is not readily apparent from the routine pat down search) The Court affirmed the judgment of the Minnesota Supreme Court who found the seizure of cocaine from a suspect's pocket during a pat down search to be constitutionally invalid because a further search of the suspect's pocket beyond that necessary to detect weapons was invalid pursuant to Terry.

Carstairs v. The State of Nevada, 94 Nev. 125 (1978) (holding "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification"): Washoe County Sheriff's Deputy and Probation Officers arrested an individual based on probable cause that he was harboring a fugitive. During a search incident to the arrest, an officer discovered marijuana cigarettes in the suspect's possession. The suspect was acquitted of harboring a fugitive and found guilty of possession of marijuana. The court found the officers had probable cause for the arrest on a charge of harboring a fugitive, therefore, the search was legal.

Security and Law Enforcement Employees v. Carey, 737 F.2d 187 (2d Cir. 1984) (holding reasonable suspicion governs strip searches of correctional officers and finding warrantless visual body cavity searches and random strip searches violate the Fourth Amendment): The Fourth Amendment protects people from arbitrary and oppressive governmental conduct and vests people with the right to be free from "unreasonable intrusions into their legitimate expectations of privacy. Id. at 201. The Fourth Amendment requires that searches be reasonable. Reasonableness is determined by balancing the intrusiveness of the search against the promotion of legitimate governmental interests. The intrusion must be viewed against the individual's legitimate expectation of privacy. For an expectation of privacy to be legitimate, the individual must have exhibited an actual subjective expectation of privacy and the expectation is one that society is prepared to recognize as reasonable. Id. The employees in this case received a rulebook indicating that they were subject to search, so their expectations of privacy were diminished significantly. The court also found that society is prepared to recognize the reasonable proposition that correctional officers have a diminished expectation of privacy in light of the burdens placed on prisons of maintaining safety, security and order. However, corrections officers should be free from "excessive, unwarranted intrusions based upon unrestrained, standardless exercises of authority by prison authorities." Id. at 202. Prisons have a legitimate interest in keeping contraband out of the prison as it poses a serious danger to both inmates and staff. Id. Warrantless strip searches of correctional officers may be reasonable under certain circumstances. Id. at 203. The reasonable suspicion standard is to govern strip searches. Id. at 204. The court found that reasonable suspicion standard applied to visitors of penal institutions should also be applied to correctional officers as they both have diminished expectations of privacy once they enter a correctional facility. Id. To justify a strip search under the reasonable suspicion standard, officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts in light of their experience. Factors to be considered are as follows: (1) nature of the tip or information; (2) the reliability of the informant; (3) the degree of corroboration; and (4) other facts contributing to suspicion or lack thereof. *Id.* at 205.

The court found the visual body cavity searches violated the Fourth Amendment on the following grounds: (1) officials had no facts indicating that a danger existed that correction officers smuggled contraband into the prison in their body cavities; (2) such demeaning searches seriously erode correction officer morale; and (3) basic concepts of human dignity dictate a course of the utmost caution before intrusion into the most private parts of the body

requiring a neutral person (judge) be interposed between the department and the correction officer, and a warrant based on probable cause be obtained.

The court found random strip searches and visual body cavity searches violated the Fourth Amendment. A strip search must be directed toward a specific person based on reasonable suspicion which standard cannot be met by random searches. No less is required of a visual body search which necessitates a warrant based on probable cause before conducting the search.

United States v. Gonzalez, 300 F.3d 1048 (9<sup>th</sup> Cir. 2002) (holding a random search of an employee's backpack by a store detective at an Air Force Base Exchange was valid): "A search otherwise unreasonable cannot be redeemed by a public employer's exaction of a 'consent' to the search as a condition of employment . . . ." Id. at 1052. However, random searches of a public employee's personal items (i.e., purses, backpacks, briefcases) may be performed without reasonable suspicion provided the employee was placed on notice that such items were subject to search before he/she brought the item to work, the search was justified at its inception (i.e., to prevent contraband from entering the prison), and the search does not go beyond the scope of its justification (i.e., searching the personal item for contraband).

United States v. Taketa, 923 F.2d 665 (9th Cir. 1991) (holding that an employee's expectation of privacy in his office does not preclude an employer's warrantless search of his office as part of a work-related investigation of employee misconduct, provided the employer has reasonable cause to believe that evidence of employee misconduct was located on the property that was searched) (holding that warrantless video taping for the purpose of searching for evidence of a crime requires a warrant based on probable cause): The DEA initiated an investigation into work-related employee misconduct based on an agent's tip that another agent (Taketa) was modifying pen registers (a device used to record numbers dialed from a monitored telephone) to illegally intercept telephone conversations. The DEA searched an office of a third person because that was the only facility that could have been used to store pin numbers. The court found that search to be based on reasonable suspicion and was conducted as a work-related investigation of misconduct. However, the DEA's use of a video to record the events taking place in the office of the third person was found to require probable cause and a warrant because the investigation had changed from a work-related investigation to a criminal investigation.

KirkPatrick v. City of Los Angeles, 803 F.2d 485 (9th Cir. 1986) (holding that a strip search of two police officers accused of theft violated the Fourth Amendment): Officers encountered an intoxicated individual causing a disturbance at the scene of a traffic accident and arrested him on an arrest warrant. That individual made conflicting statements claiming the officers stole money from him. A sergeant searched the officers' pockets, wallets, weapon belts, and the patrol car, but failed to discover evidence of wrongdoing. The lieutenant ordered the sergeant to perform strip searches of the officers "to protect the officers' records and the department's credibility." The officers objected to the strip searches, so the lieutenant called Internal Affairs Division. The lieutenant at IAD instructed that the officers should be strip searched even without their consent. The Court said that because of the highly intrusive nature of strip searches, investigative strip searches of police officers must be supported by a reasonable suspicion that evidence will be found. "A reasonable suspicion exists when the person responsible for the search is aware of specific articulable facts, and inferences from those facts, which reasonably warrant a suspicion that evidence will be uncovered." Because of the following facts, the strip search violated the Fourth Amendment: the accusations of theft varied from \$600 to \$60; then the suspect refused to repeat the theft allegation; the initial search by the sergeant revealed nothing; and the sergeant reported there was no reason to believe the suspect.

O'Connor v. Ortega, 480 U.S. 709 (1987) (holding that "public employer intrusions on the constitutionally protected privacy interests of government employees for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances. Under this reasonableness standard, both the inception and the scope of the intrusion must be reasonable.") Id. at 725-26. The Court noted that "a search of an employee's office by a supervisor will be 'justified at its inception' where there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a noninvestigatory work-related purpose such as to retrieve a needed file." Id. at 726. "The search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the [misconduct]." Id. Further, even where an employee has an expectation of privacy and no policy to search or inventory employees' offices exists, "[a] search to secure state property is valid as long as petitioners had

a reasonable belief that there was government property in [the] office which needed to be secured, and the scope of the intrusion itself reasonable in light of this justification." *Id.* at 728.

Wiley v. Department of Justice, 328 F.3d 1346 (Fed. Cir. 2003) (holding the search of a staff vehicle in the federal correctional institution parking lot violated the Fourth Amendment) Wiley was a teacher at a prison and bragged to other staff about having a gun in his car. Wiley parked his car in the prison parking lot adjacent to the prison along with other staff and visitors to the prison. Officials posted a notice at the entry to the parking lot that all persons, property (including vehicles) and packages entering the premises were subject to search. The court found that the warden instituted an internal investigation for the purposes of maintaining security in the prison. Wiley had an expectation of privacy in his vehicle, however, the sign at the entrance to the prison mitigated Wiley's expectation of privacy. The warden needed only reasonable grounds to suspect that Wiley kept a gun in his vehicle parked in the prison's lot. Id. 1353. The question became whether the informant's letter provided with warden with reasonable suspicion. The court applied the same factors to the reasonable suspicion determination as used in a probable cause determination—look to the totality of the circumstances including informant's veracity, reliability, and basis of knowledge. The warden did not corroborate the anonymous tip by anything outside the four corners of the letter. The informant failed to furnish information as to how he knew about the gun and no corroboration of the letter was performed. The letter was written in January and was not acted on by the warden until November. The letter gave no indication as to why the warden should suspect Wiley to have kept the gun in his car for such an extended period. The warden testified that the search of Wiley's car gave the quickest and easiest way to confirm the reliability of the tip. However, the court found the warden's logic sidestepped the issue, which is whether reasonable suspicion existed for the search. Without reasonable suspicion, the court found that the search violated the Fourth Amendment. The court did not find an urgent situation requiring action because of the delay between the writing of the anonymous tip and the action on it. The court made it clear that circumstances might arise in which the danger alleged in an anonymous tip might be so urgent as to justify a search without a showing of reliability. The court did not find such an urgent situation in the facts of this case.

Gibson v. Gates, 907 F2d 879 (9th Cir. 1990) Search of an officer's home requires probable cause.

National Treasury Employees Union v. Von Raab (1989) U.S. f 109 S.Ct. 1384 Employees applying for positions involving drug enforcement or carrying firearms may be tested without suspicion. On November 13, 1989, the U.S. Supreme Court denied a hearing, upholding random testing of Boston police officers. (Note: State and Department policy govern drug testing.)

Skinner v. Railway Labor Executives' Assoc. (1989) U.S.1 109 S.Ct. 1402 In a fitness oriented position, government may compel blood and urine testing without individualized suspicion following certain incidents (ie. an accident)

Atwater v. City of Lago Vista, 532 U.S. 318 (2001) (holding that officers may arrest persons for minor offenses (i.e., failure to wear a seatbelt) punishable by only a fine without violating the Fourth Amendment). In this case, a Texas police officer arrested a female driver he stopped for not wearing a seat belt and for her 3 yr. old and 5yr. old children not wearing seat belts while seated in the front seat of a pick up truck. The Court affirmed the legality of the arrest, but stated, "[I]n her case, the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment." It is unclear in reviewing this case whether the officer attempted and failed to have this driver obey the law, whether she had a bad attitude indicating that she would not willingly comply, or whether the officer was badge heavy in exercising his duties. Based on these facts, the Fifth Circuit Court of Appeals held that officers could not arrest for minor traffic offenses pursuant to the Fourth Amendment. Fortunately, the Supreme Court reversed the Fifth Circuit's decision. What the case demonstrates is that bad facts can make bad law. Officers should always be mindful of this as they carry out their duties.

Florida v. Royer, 460 U.S. 491 (1983) (holding the stop of a suspect attempting to board a flight at Miami International Airport exceeded the limits established in Terry for stop and frisk and became tantamount to an arrest): The Court noted several grounds for its decision. Police may not carry out a full search of the person, his automobile, or other effects without probable cause. Police may not verify their suspicions of criminal activity by means that approach the conditions of arrest. Statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act

of free will. Officers' conduct may not be more intrusive than necessary to effectuate an investigative detention otherwise authorized by the *Terry* line of cases. In this case, officers confronted the suspect because he purchased a one-way ticket to New York (a target city for narcotics agents) under an assumed name and checked two large suitcases bearing luggage tags with the same assumed name. Officers believed the suspect fit the profile of a drug courier and approached him to investigate. Officers requested the suspect to provide his driver's license and airline ticket. Without returning the items, the officers requested the suspect to accompany them to a small room adjacent to the concourse. Officers retrieved the suitcases from the airline without the suspect's consent. The suspect provided a key that opened one of the suitcases in which officers found marijuana. The suspect did not know the combination to the lock on the other suitcase, so officers pried it open and found that it also contained marijuana. The court found that officers went beyond the limited restraint permitted in a *Terry* investigatory stop. Officers testified that they would not have allowed the suspect to leave the small room in which he was confined even though they admitted that they did not have probable cause to arrest the suspect until after they opened the suitcases. Because the suspect was unlawfully confined at the time the officers sought his permission to open the suitcases, his consent was invalid.

United States v. Baron, 860 F.2d 911 (9th cir. 1988) (holding that if a seizure exceeds and investigatory stop, the de facto arrest may be permissible if supported by probable cause to arrest). When officers move a suspect from an area open to the public to an enclosed room under police control, the circumstances are deemed to be more coercive than the brief public interview. In this case, the officers took a female suspected of conspiracy to possess and distribute cocaine from the front room of a residence where she was in the company of two male suspects to a private adjacent room so the police could use a black light to confirm the suspect's possession of the object of the sting operation. The court held the removal of the female to the private room was highly coercive, so the officers were required to have probable cause to arrest before removing her to that room.

# FORMS and EXEMPLARS

**Example of Full Investigative Report** 

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS OIG

| DATE:    |   |
|----------|---|
| то:      |   |
| FROM:    |   |
| SUBJECT: | REPORT OF PERSONNEL COMPLAINT INVESTIGATION IA- |

# **COMPLAINT:**

Department complaint alleging [enter allegation main category here] against

# **ACCUSED STAFF:**

[to put a page break on any document, depress the CTRl and enter key at the same time]

# **SUMMARY:**

# **ALLEGATION 1**

Department complaint alleging [enter name and position of staff member here] engaged in [enter main category] when [described action of employee/accused staff member that depict behavior leading to the allegation].

Repeat allegations as appropriate and alleged to include any that are developed during the investigation.

# INTERVIEWED LIST

| NAME OF<br>INTERVIEWED                                | DATE/TIME<br>INTERVIEWED | AUDIO<br>RECORDED TAPE<br>NUMBER AND SIDE | PAGE<br>NUMBER |
|---|--------------------------|---|----------------|
| Last Name, first name<br>Job title<br>Work assignment |                          |   |                |
| sort table so that it is in alphabetical order        |                          |   |                |
|   |                          |   |                |
|   |                          |   |                |

# INVESTIGATION

# THIS AREA IS FOR THE INTERVIEWS OF THE WITNESSES AND ACCUSED.

## **INVESTIGATOR NOTES**

- 1. Remember notes should not include opinions of the investigating staff, but should include comments made by witnesses and/or accused that could be of interest; Notes should include information from regulations, procedures and any known or perceived variances from those;
  - Notes should be items of information that the adjudicator and/or person of concurrence should want or need to know.

## **ADDENDA**

**1.** Remember all referenced Addenda items should be assembled and numbered in order of reference in the report. Mark each page of an Addenda item in its lower *right* corner with ADDENDUM sequence #. When the item is multi-paged, also sequence each page. From the example above, it would read in the lower right corner ADDENDUM 1 Page 1 of 2, ADDENDUM 1 Page 2 of 2.

# Forms for use during and in conjunction with an Administrative Investigation The forms are not present necessarily in order of use during an investigation

#### Administrative Notice of Interview- PEACE OFFICER

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS NOTICE OF INTERROGATION/INTERVIEW ADMINISTRATIVE INVESTIGATION Peace Officer

| _ | _   | `  |  |
|---|-----|----|--|
| 1 | l'( | ١. |  |

FROM: , IG's Office

It is alleged that you engaged in

DATE:

This is to advise you that you are the subject of an internal administrative investigation that could result in punitive action being taken against you. While investigators gather the facts concerning the allegations against you, be assured that every reasonable effort will be made to conduct the investigation in a neutral, fair, impartial, and timely manner. Your full cooperation is requested and expected. This investigation is based upon one or more allegations of improper conduct or activity that has been received by this office. Nothing in this process shall abridge any rights guaranteed by the Constitution of the United States or any other applicable law or regulation.

Pursuant to State law, (NRS 289.060) you have the right to have two representatives of your choosing present during any phase of an interrogation or hearing relating to the investigation including without limitation, a lawyer, a representative of a labor union or another peace officer only, when you are questioned regarding this/these allegations. You have up to 48 hours to obtain a lawyer or other authorized representative, if you so choose. However, the representative must not be a person connected to or named as a subject or witness to the investigation.

| This matter has been assigned for investigation by Inspector Canada Domala V. Dal Doute who is in about of                         |
|--|
| This matter has been assigned for investigation by Inspector General Pamela K. Del Porto who is in charge of                       |
| the investigation. You are directed to make yourself available for interview on <b><date></date></b> at <b><time></time></b> . The |
| interview will be conducted by < ASSIGNED INVESTGATOR> and <any additional="" people<="" td=""></any>                              |
| WHO WILL BE IN THE ROOM>. The interview will be held at <location>. You are expected to</location>                                 |

provide candid and truthful information during the interview. Providing false or misleading statements to the interviewer is a separate violation that could result in additional disciplinary action, including termination.

This is an official investigation being conducted by the Department of Corrections. All matters are strictly confidential. In order to protect your confidentiality, the rights of other employees and involved persons, and the integrity of the investigation, you are hereby directed not to participate in the dissemination/discussion of any information based on this investigative process. In addition, you will exclude yourself from any form of communication with others regarding this investigation. Information shared with your representative is excluded from this directive. Any violation of this confidentiality directive or attempts to influence any witness or victim is a separate violation that could result in additional disciplinary action, including termination.

( ) I waive my right to have an attorney/representative present.

|                | nspector General       |                                     |
|----------------|------------------------|-------------------------------------|
| Administrative | e Investigations Guide |                                     |
|                |                        |                                     |
| ( )            | I wish to have         | represent me during this interview. |

Any information that a representative obtains from the peace officer who is the subject of the investigation is confidential and must not be disclosed, except under the prescribed mandated circumstances outlined in NRS 289.080.

# Forms for use during and in conjunction with an Administrative Investigation The forms are not present necessarily in order of use during an investigation

#### **Administrative Notice of Interview- Non Peace Officer**

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS NOTICE OF INTERROGATION/INTERVIEW ADMINISTRATIVE INVESTIGATION

Non Peace Officer

| TO:   |               |
|-------|---------------|
| FROM: | , IG's Office |

DATE:

This is to advise you that you are the subject of an internal administrative investigation that could result in punitive action being taken against you. While investigators gather the facts concerning the allegations against you, be assured that every reasonable effort will be made to conduct the investigation in a neutral, fair, impartial, and timely manner. Your full cooperation is requested and expected. This investigation is based upon one or more allegations of improper conduct or activity that has been received by this office. Nothing in this process shall abridge any rights guaranteed by the Constitution of the United States or any other applicable law or regulation.

Pursuant to State law, (NRS 284.387) you have the right to have two representatives of your choosing, including but not limited to a lawyer or other representative, at any time during questioning relating to the investigation about this/these allegations. You have not less than up to two business days (non-peace officer) to obtain a lawyer or other authorized representative, if you so choose. However, the representative must not be a person connected to or named as a subject or witness of the investigation.

| It is alleged that you engaged in |  |  |
|-----------------------------------|--|--|
|                                   |  |  |

This matter has been assigned for investigation by Inspector General Pamela K. Del Porto who is in charge of the investigation. You are directed to make yourself available for interview on **<DATE>** at **<TIME>**. The interview will be conducted by **< ASSIGNED INVESTGATOR>** and **<ANY ADDITIONAL PEOPLE** WHO WILL BE IN THE ROOM>. The interview will be held at **<LOCATION>**. You are expected to provide candid and truthful information during the interview. Providing false or misleading statements to the interviewer is a separate violation that could result in additional disciplinary action, including termination.

This is an official investigation being conducted by the Department of Corrections. All matters are strictly confidential. In order to protect your confidentiality, the rights of other employees and involved persons, and the integrity of the investigation, you are hereby directed not to participate in the dissemination/discussion of any information based on this investigative process. In addition, you will exclude yourself from any form of communication with others regarding this investigation. Information shared with your representative is excluded from this directive. Any violation of this confidentiality directive or attempts to influence any witness or victim is a separate violation that could result in additional disciplinary action, including termination.

( ) I waive my right to have an attorney/representative present.

# Office of the Inspector General Administrative Investigations Guide ( ) I wish to have \_\_\_\_\_\_ represent me during this interview. Per Departmental regulation, any information that a representative obtains from the accused or the investigation is confidential and must not be disclosed. IMPORTANT: Your signature is not an admission of guilt. Your signature is merely an acknowledgement of receipt of this notice. Your refusal to sign this notice when ordered to do so may result in disciplinary action against you.

DATE

PERSON SERVING SIGNATURE

DATE

EMPLOYEE SIGNATURE

# Forms for use during and in conjunction with an Administrative Investigation The forms are not present necessarily in order of use during an investigation

#### Administrative Notice of Interview- WITNESS

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS NOTICE OF ADMINISTRATIVE WITNESS INTERVIEW

| TO:   | , [job title], [assignment location] |
|-------|--------------------------------------|
| FROM: | Pamela Del Porto, Inspector General  |
| DATE: |                                      |

This is to advise you that you are a witness in connection to an internal administrative investigation. While investigators gather the facts concerning the allegations, your full cooperation is requested and expected. This investigation is based upon one or more allegations of improper conduct or activity that has been received by this office. Nothing in this process shall abridge any rights guaranteed by the Constitution of the United States or any other applicable law or regulation.

Pursuant to State law you have the right to have two representatives of your choosing present during an interview relating to the investigation, including without limitation, a lawyer, a representative of a labor union or another peace officer only. You have not less than 48 hours to obtain a lawyer or other authorized representative, if you so choose. The presence of the second representative must not create an undue delay in either the scheduling or conducting of the interview. The representative must not be a person connected to or named as a subject of the investigation.

You are directed to make yourself available for interview on **<DATE>** at **<TIME>**. The interview will be held at **<LOCATION>**. You are expected to provide candid and truthful information during the interview. Providing false or misleading statements to the interviewer is a separate violation that could result in additional disciplinary action, including termination.

This is an official investigation being conducted by the Department of Corrections. All matters are strictly confidential. In order to protect your confidentiality, the rights of other employees and involved persons, and the integrity of the investigation, you are hereby directed not to participate in the dissemination/discussion of any information based on this investigative process. In addition, you will exclude yourself from any form of communication with others regarding this investigation. Information shared with your representative is excluded from this directive. Any violation of this confidentiality directive or attempts to influence any witness or victim is a separate violation that could result in additional disciplinary action, including termination.

| ( ) I waive my right to have an attorney/representative prese |                | ney/representative present.        |
|---|----------------|------------------------------------|
| ( )   | I wish to have | represent me during this interview |

Any information that a representative obtains from the peace officer who is a witness concerning the investigation is confidential and must not be disclosed .

| IMPORTANT: Your signature is merely an acknowledgement of receipt of this notice. Your refusal to sithis notice when ordered to do so may result in disciplinary action against you. |    |      |                          | Your refusal to sign |
|--|----|------|--------------------------|----------------------|
| EMPLOYEE SIGNATUR  | RE | DATE | PERSON SERVING SIGNATURE | DATE                 |

Admonition of Rights to be read to accused staff member before interrogation. Should be read on recording unless waived by accused.

State of Nevada Department of Corrections

**Admonition of Rights (Administrative)** 

| Case Number |  |
|-------------|--|
| IA-         |  |

This is to advise you that you are being questioned as part of an official investigation by the Nevada Department of Corrections. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by law, including the Constitution of the State of Nevada and the Constitution of the United States. This includes the right not to be compelled to incriminate yourself. You are further advised that if you refuse to answer questions and/or mislead or give false statements relating to the performance of your official duties, you will be subject to Department Charges that could result in your dismissal from employment. If you do answer, your statements will not be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Department Charges.

As in all investigations conducted by this office, the IG is in charge of the investigation. The investigator(s) assigned to the case is (enter name[s]). You may upon request, without limitation, have a lawyer and/or other representative of your choosing present, as long as the representative(s) is not otherwise connected to, or the subject of this investigation, per NRS 289.060/NRS 284.387.

I do hereby acknowledge that I have received and understand the above Administrative Admonition of Rights.

| Signature:              | Witness: |
|-------------------------|----------|
| Date:                   | Title:   |
| Time:                   | Date:    |
|                         | Time:    |
| Employee Representative |          |
| Name:                   | Title:   |
| Date:                   | Time:    |

**DATE:** 

TO:

Notice of Confidentiality can be read prior to or after the interview of all witnesses and accused.

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS OFFICE OF THE INSPECTOR GENERAL MEMORANDUM

| ROM:   |
|--|
| UBJECT: Admonition of Confidentiality  |
| You are ordered not to discuss this case or any portion of your interview concerning the llegations under investigation in this matter with anyone. You are ordered not to have any interaction, engage in any conversations with, intimidate, threaten or coerce any other articipant, witness, accused or reporting party, about this matter or the investigation. This interview and the discuss all questions asked, your responses to those questions, and any reports authored by you. You are not to discuss any conversations related to your interview and the matter under investigation. You are not to share copies of any tape recordings of this interview hat may be in your possession with any person.  In the event this order is violated, you may be subject to new and/ or additional disciplinary action, up to and including termination. |
| our signature below confirms that you have read, understand and agree to follow this dmonition.  |
| ate Signature  |
| any information that a representative obtains from the peace officer who is the subject of   |

Any information that a representative obtains from the peace officer who is a witness concerning the investigation is confidential and must not be disclosed as outlined in NRS 289.080.

the investigation is confidential and must not be disclosed, except under the prescribed

mandated circumstances outlined in NRS 289.080.

**DATE:** 

Notice of Confidentiality can be read prior to or after the interview of all witnesses and accused. This Notice of Confidentiality is for those employees or situations wherein a Representative is not present with the staff member, including accused and/or witnesses.

# STATE OF NEVADA DEPARTMENT OF CORRECTIONS OIG MEMORANDUM

| TO:  |  |
|--|--|
| FROM:  |  |
| SUBJECT: Admonition of Confidentiality   |  |
| You are ordered not to discuss this case or any portion of your interallegations under investigation in this matter with anyone. You are interaction, engage in any conversations with, intimidate, threaten or participant, witness, accused or reporting party, about this matter or admonition covers all questions asked, your responses to those questions authored by you. You are not to discuss any conversations related to matter under investigation. You are not to share copies of any tape that may be in your possession with any person. | ordered not to have any or coerce any other the investigation. This stions, and any reports to your interview and the recordings of this interview |
| In the event this order is violated, you may be subject to new and/o action, up to and including termination.  | r additional disciplinary  |
| Your signature below confirms that you have read, understand and admonition.   | agree to follow this   |
| Date Signature   |  |